

Exhibit O

Deposition Transcript of Vanessa Lefler, Ph.D

In The Matter Of:

Kayla Gore v.

William Byron Lee

Vanessa Lefler

May 22, 2020



Min-U-Script® with Word Index

1 **UNITED STATES DISTRICT COURT**
2 **MIDDLE DISTRICT OF TENNESSEE**
3 **NASHVILLE DIVISION**

3 -----X

4 **KAYLA GORE; JAIME COMBS; :**

5 **L.G.; AND K.N., :**

6 **Plaintiffs, : Case No.**

7 **v. : 3:19-CV-00328**

8 **WILLIAM BYRON LEE, in his official :**

9 **capacity as Governor of the State of :**

10 **Tennessee; and LISA PIERCEY, in her :**

11 **official capacity as Commissioner of the :**

12 **Tennessee Department of Health, :**

13 **Defendants. :**

14 -----X

15
16 **REMOTE VIDEOTAPED DEPOSITION OF**

17 **VANESSA LEFLER**

18 **Friday, May 22, 2020**

19 **Tennessee**

20 **12:59 p.m.**

21
22 **Job No.: 2020-85189**

23 **Pages: 1 - 90**

24 **STENOGRAPHICALLY REPORTED BY:**

25 **GISELLE MITCHELL-MARGERUM, RPR, CRI, CCR, LCR**

1 Deposition of VANESSA LEFLER, held remotely,
2 via videoconference at:

3
4
5 Tennessee

6
7
8
9 Pursuant to agreement, before Giselle
10 Mitchell-Margerum, Registered Professional Reporter,
11 Certified Reporting Instructor, Licensed Court Reporter
12 (TN), Certified Court Reporter (GA), and Notary Public
13 (Washington, D.C.).
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A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS:

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TARA BORELLI

SARA SEDGWICK

SUNG JAE LIM

KEVIN MONTGOMERY

W I T N E S S I N D E X**Witness Page****VANESSA LEFLER (sworn)7****Examination by SASHA BUCHERT7**

E X H I B I T I N D E X

No.	Description	Page
Exhibit 1	Amended Complaint for	16
	Declaratory and Injunctive Relief	
Exhibit 2	Curriculum Vitae -- Vanessa	17
	Lefler	
Exhibit 3	Defendants' Expert	31
	Disclosure	
Exhibit 4	Declaration of Vanessa	32
	Lefler	
Exhibit 6	*CONFIDENTIAL* --	52
	Statistical Report	
Exhibit 7	*CONFIDENTIAL* --	59
	Certificate of Live Birth	
Exhibit 8	Document re: Ambiguous	64
	Genitalia With Perineoscrotal	
	Hypospadias	
Exhibit 9	Article - Evaluating bias	71
	due to data linkage error in electronic	
	healthcare records	
Exhibit 10	Tennessee Code Annotated	76
	(Section 68-3-202)	
Exhibit 11	Model State Vital Statistics	79

1 P R O C E E D I N G S

2 (Witness sworn.)

3 MS. BUCHERT: Thank you so
4 much. Before we begin, I just want to
5 clarify that counsel stipulate that all
6 objections are reserved, except as to
7 form. And that this deposition is not
8 being recorded.

9 Good afternoon, Ms. Lefler.

10 THE WITNESS: Hi.

11 MS. BUCHERT: Is that how you
12 pronounce your last name?

13 THE WITNESS: Yes. Lefler is
14 correct.

15 MS. BUCHERT: Okay, great.
16 Thank you.

17 Thanks so much for being here today.
18 My name is Sasha Buchert, and I represent
19 the plaintiffs in this matter. Along
20 with my colleague, Tara Borelli, who also
21 works with LAMBDA Legal, representing the
22 plaintiffs in this matter.

23 And also joining us is John --
24 Mr. John Winemiller, who is representing
25 the plaintiffs, from the law firm,

1 Merchant & Gould.

2 THE WITNESS: Nice to meet you
3 all.

4 MS. BUCHERT: And I'll let the
5 defendants make their appearances.

6 MS. SHEW: This is Dianna Shew,
7 with the Tennessee Attorney General's
8 Office, representing the defendants in
9 this case. And also from the Tennessee
10 Attorney General's Office with me today,
11 virtually, are Sara Sedgwick and Jae Lim.

12 VANESSA LEFLER

13 Having been duly sworn testified as follows:

14 EXAMINATION BY MS. BUCHERT:

15 Q. Before we get started, I'd like to
16 go over some agreements for the deposition,
17 which will hopefully make this easier for
18 everyone. Although the deposition is on
19 video, we're not recording it.

20 What we're doing is asking the
21 court reporter to take a transcript of your
22 testimony, so anyone reading it will be able
23 to tell what responses were given. So you
24 will need to verbally say "yes" or "no" to any
25 questions I ask.

1 If you were to nod instead of
2 saying "yes" or "no," that would not be
3 recorded. Is that clear?

4 A. Yes, that is.

5 Q. And do you understand that you are
6 under oath today?

7 A. I do understand that.

8 Q. And that this requires you to
9 testify truthfully?

10 A. Yes.

11 Q. Okay. And next, we cannot speak at
12 the same time, because the court reporter
13 needs to be able to take down what each of us
14 says. So please let me finish asking the
15 questions before you start answering, and I
16 will try to finish answering before I ask you
17 another question.

18 Is that agreed?

19 A. Yes.

20 Q. Thanks. If you do not understand
21 something I ask, please let me know and I will
22 try to rephrase it for you. If you answer my
23 questions, I am going to assume you understood
24 it.

25 Is that agreed?

1 A. Yes.

2 Q. And you must answer the questions
3 audibly, with words. The court reporter
4 cannot take down nods of the head, or
5 "uh-huhs" or "uh-uhs." Is that clear?

6 A. Yes.

7 Q. Occasionally, one of the lawyers may
8 make an objection to a question that is asked.
9 Objections are made for the record only. You
10 must answer the question, unless instructed
11 not to, by the attorneys representing you.

12 Is that clear?

13 A. Yes. That's clear.

14 Q. Okay. And if you need a break,
15 please let me know, and I will try to
16 accommodate that, whenever needed. However,
17 if you or anyone needs a break, we ask that
18 you finished answering the line of question,
19 meaning that we can't take a break with an
20 open question pending.

21 Is that understood?

22 A. Yes. That's understood.

23 Q. Are you under any medication that
24 would prevent you from giving true and
25 accurate and complete testimony today?

1 A. No. I'm not.

2 Q. And will you tell me if you do not
3 understand any question of mine?

4 A. Yes.

5 Q. And will you tell me if my question
6 is ambiguous in any way?

7 A. Yes.

8 Q. And will you tell me if you need
9 more information to answer any question that I
10 ask?

11 A. Yes.

12 Q. And will you make every effort today
13 to answer all my questions carefully and
14 fully?

15 A. Yes, I will.

16 Q. And will you make every effort to
17 answer all of my questions accurately and
18 honestly?

19 A. Yes.

20 Q. Is there any reason why you can't do
21 all these things that I just asked about?

22 A. I can think of no reason.

23 Q. Throughout the day, I may refer to
24 the plaintiffs in this matter --

25 Ms. Kayla Gore; Ms. Jaime Combs; L.G.; and

1 K.N., who are transgender women.

2 As such, I'll be referring to
3 them using "she," "her" and "hers" pronouns,
4 and honorifics, such as, "Ms. Gore,"
5 consistent with their gender identity. And we
6 ask that you do the same.

7 Do you understand?

8 A. I do.

9 Q. And did you receive the exhibits
10 that we sent to defendants, that we'll be
11 using today?

12 A. I received a package of 11 exhibits
13 that are numbered "one" through "11."

14 Q. Great. And do you have printed
15 copies of those?

16 A. I have them electronically in front
17 of me, if that's okay.

18 Q. That's great. Okay. And we have
19 the ability to share them on the screen, that
20 I'll use for some of them. But I just wanted
21 to make sure that you had easy access to them.

22 A. Thank you.

23 Q. Okay. Well, let's get started.
24 Could you please state your full name for the
25 record?

1 A. My name is Vanessa Anne Lefler.

2 Q. Okay. And where do you work?

3 A. I work at the Tennessee Department
4 of Health.

5 Q. Okay. And what is your current
6 title?

7 A. My current title is Director of
8 Vital Statistics.

9 Q. Okay. And, have you ever been
10 deposed before?

11 A. I have never been deposed.

12 Q. Have you ever testified at a trial
13 or a hearing before?

14 A. I have testified at a trial before.

15 Q. Okay. And when was that?

16 A. That was, I believe, in October of
17 2019.

18 Q. And what was that case about?

19 A. That case was regarding -- an issue
20 regarding to -- access to abortion in
21 Tennessee.

22 Q. Okay. And what was your role?

23 A. My role was to describe with the
24 information that the state collects, about
25 abortion, from our Induced Termination of

1 Pregnancy data.

2 Q. And so, you were representing --
3 which party were you representing?

4 A. Oh. I was with the state of
5 Tennessee.

6 Q. Okay. Was the state of Tennessee --
7 was the state of Tennessee a defendant in that
8 case?

9 A. I believe so. I'm not sure.

10 Q. Okay. Did you serve as an expert in
11 that role?

12 A. No.

13 Q. And did you submit any written
14 testimony in that role?

15 A. No.

16 Q. How many times did you testify in
17 that role?

18 A. Once.

19 Q. Thank you. In your words, what is
20 this lawsuit about?

21 A. The question, as I understand it, is
22 whether the state should allow individuals to
23 change their gender designation on the birth
24 certificate, issued by the state of Tennessee.

25 Q. And, I'm sorry. I apologize. I

1 need to step back, because I forgot to ask a
2 question about your prior appearance during
3 the case that you worked on. And would just
4 like to know more about the content of that
5 testimony.

6 What, exactly, you testified?

7 A. I described what the state reports
8 each year, in terms of the total number of
9 abortions that are performed in the state.
10 The rate of abortion, relative to the live
11 birthrate, and the population of women in
12 reproductive age in the state.

13 And, also, the percentage of
14 abortions that are performed at certain
15 periods of gestational age.

16 Q. Is that -- was that the full extent
17 of the testimony?

18 A. I was also asked questions about
19 whether, in my estimation, there was any
20 observable trend in the gestational age at
21 which abortions were performed in the state.
22 And also asked questions about where abortions
23 are performed in the state, in terms of the
24 healthcare providers that provide that
25 service.

1 Q. Okay. Anything else?

2 A. Not that I remember.

3 Q. Okay. Thank you. How did you first
4 learn about this case?

5 A. I was asked to provide information
6 that is relevant to my work with the --
7 Tennessee's birth certificate data.

8 About whether we could know if there
9 was any particular characteristics about the
10 way that we collect "sex" on the Tennessee
11 birth certificate from our department, and the
12 state's attorneys.

13 Q. And when was that?

14 A. It was last fall. But I honestly
15 couldn't remember the date.

16 Q. And before you worked on this case,
17 had you ever worked with the Office of the
18 Attorney General for the state of Tennessee?

19 A. With respect to the case that I
20 testified in, about abortion access.

21 Q. Okay. Had you worked with them --
22 with the Office of the Attorney General for
23 the state of Tennessee, in any other role or
24 capacity?

25 A. No.

1 Q. Have you reviewed the amended
2 complaint in this case?

3 A. I have read it. Yes.

4 Q. Okay. I'd like to turn to what's
5 been premarked as "Exhibit 1." Can you pull
6 that up, or would you like me to share it on
7 the screen?

8 A. I can see it in front of me, thank
9 you.

10 (Exhibit 1 marked for identification)

11 Q. Okay. I'm showing you what's been
12 premarked as Exhibit 1. Have you seen this
13 document before?

14 A. I have seen this document before.

15 Q. And what is it?

16 A. Hold on a second. I need to scroll
17 up. I'm looking at the last page of it,
18 because I had it open.

19 Q. Okay. Take your time.

20 A. Yes. It reads that it is the
21 Amended Complaint for Declaration and
22 Injunctive Relief. And I believe it states
23 the key concerns and responses from the state.

24 Q. Okay. All right. And is this the
25 complaint which you just referred?

1 A. Yes.

2 Q. Okay. Have you reviewed the expert
3 report of Dr. Randi C. Ettner in this matter?

4 A. No. I don't believe I have.

5 Q. Okay. Have you reviewed the expert
6 report of Dr. Shayne Sebold Taylor in this
7 matter?

8 A. I'm not remembering.

9 Q. Have you reviewed any of the expert
10 reports associated with this case?

11 A. None that stands out specifically to
12 me. I know I have gone through on this
13 document, part of -- many of the pages, but
14 I'm not recalling any of the names that you're
15 specifically mentioning.

16 Q. Okay. So, to -- to the best of your
17 recollection, you don't remember reading any
18 of the declarations associated with this case?
19 The expert declarations.

20 A. To the best of my recollection, no.

21 Q. Okay. I'd like to turn to what's
22 been premarked as "Exhibit 2."

23 (Exhibit 2 marked for identification)

24 A. Yes.

25 Q. And ask you a few questions about

1 this. Is this -- have you seen this document
2 before?

3 A. This appears to be my résumé.

4 Q. And is your résumé up-to-date and
5 accurate?

6 A. Yes.

7 Q. I'd like to ask you a few questions
8 about the content of your résumé.

9 A. Yes.

10 Q. How long have you been -- how long
11 have you been the Director of Vital Statistics
12 & Public Health Administrator 2?

13 A. Since April 1st of 2018.

14 Q. Okay. And what are your duties?

15 A. My responsibilities are to supervise
16 the state's collection of vital events data,
17 which include information about birth, death,
18 fetal death, marriage, divorce, and induce
19 termination -- induced terminations of
20 pregnancy.

21 I manage our reporting of many of
22 those events to the Centers for Disease
23 Control and Prevention; and also, the Social
24 Security Administration; and also steward our
25 data sharing with other state government

1 agencies, researchers, and the public.

2 Q. And what did you do before becoming
3 the Director of Vital Statistics?

4 A. For a brief period, I was employed
5 as a Statistical Research Specialist with the
6 Department of Health. And before that, I was
7 a Professor of Political Science at Middle
8 Tennessee State University.

9 Q. Okay. And what were your duties at
10 the Division of Policy and Planning?

11 A. They were more involved in
12 performing data analysis and, actually,
13 compiling the files that we would share with
14 other divisions and state government agencies.

15 Q. And how long did you work in that
16 position -- in that role?

17 A. About three months.

18 Q. About three months? Okay. And you
19 said before joining the Tennessee Department
20 of Health, that you worked -- according to
21 your résumé -- at the Middle Tennessee State
22 University?

23 Is that accurate?

24 A. Yes. That's correct.

25 Q. Okay. And how long did you work

1 there?

2 A. I worked there for five and a half
3 years.

4 Q. Okay. And which department did you
5 work in?

6 A. Political Science and International
7 Relations.

8 Q. Okay. And were you in that
9 department for the entire time?

10 A. Yes.

11 Q. And did you teach any courses in
12 that department?

13 A. Yes. I taught many courses in
14 Political Science and International Relations.

15 Q. Okay. Can you give us some
16 examples?

17 A. I taught courses on introductory
18 international relations; international
19 security; conflict resolution; Model United
20 Nations; and research methods.

21 Q. And I noticed on the résumé that
22 there was -- you know, you've done some
23 significant work on conflict resolution. Is
24 that a particular interest of yours?

25 A. Yes. I wrote my doctoral

1 dissertation on conflict resolution, and I
2 very much enjoyed that topic.

3 Q. And what was your doctoral
4 dissertation about -- with regard to --

5 A. In --

6 Q. Sorry.

7 A. Yes. No. Thank you. My doctoral
8 dissertation was a theory about venue shopping
9 among countries, when they attempt to resolve
10 their disputes.

11 So, an example of that might be if a
12 country -- if two countries have a conflict,
13 would they decide to negotiate bilaterally, or
14 go to the United Nations.

15 Q. And what kind of research did you do
16 to put that together?

17 A. It was a combination of game theory,
18 to develop the model, and computer simulations
19 to design some of the important features of
20 that model, that could apply to real world
21 scenarios, that I tested with case studies,
22 and laboratory experiments.

23 Q. And it sounds like conflict --
24 international conflict resolution is a
25 passion. But are there other areas of

1 research that you did? You know, either while
2 at school, or while serving in your role at
3 Middle Tennessee?

4 A. Yes. So, my primary areas of
5 research are in international relations. I
6 have a paper published on the United Nations
7 Security Council; as well as another paper on
8 international conflict resolution; and a third
9 project on the use of laboratory experiments
10 in international relations.

11 I also did research on military
12 alliances and international organizations.

13 Q. Can you talk about the work you did
14 with regard to the UN Security Council? What
15 was that about?

16 A. The question that we -- my co-author
17 and I were wanting to answer was whether there
18 was any sense of representation between the
19 membership at large of the United Nations, and
20 the individual countries that are on the
21 United Nations Security Council.

22 Q. Okay. Thank you.

23 A. Uh-huh.

24 Q. And it looks like, according to your
25 résumé, you've got a bachelor's degree in

1 political science. Is that accurate?

2 A. Yes.

3 Q. And where was that degree from?

4 A. Westminster College in Fulton,
5 Missouri.

6 Q. And when did you obtain that degree?

7 A. 2006.

8 Q. Do you possess any other
9 undergraduate or graduate degrees?

10 A. No. I just have my bachelor's
11 degree from Westminster, and my PhD from the
12 University of Iowa.

13 Q. Do you have -- do you possess a
14 degree in medicine?

15 A. No.

16 Q. And you don't possess a degree in
17 psychology. Is that correct?

18 A. That is correct. I do not.

19 Q. And you don't possess a degree in
20 endocrinology. Is that correct?

21 A. That is correct.

22 Q. And you don't have any training in
23 neurobiology. Is that correct?

24 A. That is correct.

25 Q. And you don't have a degree in

1 biology. Is that accurate?

2 A. That is accurate.

3 Q. And your -- your résumé lists two
4 publications. Looks like one in 2015, and one
5 in 2017. Is that right?

6 A. Let me look. This résumé is not my
7 complete curriculum vitae, but it presents a
8 selection of my publications. So I can say
9 that, yes, this does list two publications.

10 It omits another journal publication
11 of mine, in the Review of the International
12 Organization, which was the paper about the
13 United Nations Security Council, that I
14 mentioned.

15 And, also, a paper with Oxford
16 Bibliographies, that I talked about, with
17 respect to laboratory experiments.

18 Q. Okay. Do either of these two
19 publications have anything to do with vital
20 statistics?

21 A. They do not use vital statistics as
22 their source of data. No.

23 Q. Do either of these publications have
24 to do with gender identity?

25 A. No. They do not.

1 Q. And do either of these publications
2 have to do with gender dysphoria?

3 A. No. They do not.

4 Q. And your CV also lists three
5 different presentations, or lectures. It
6 looks like -- is that accurate?

7 A. Yes.

8 Q. And did any of these lectures have
9 to do with vital statistics?

10 A. No. They were not based on data
11 that would use vital statistics.

12 Q. Did any of these lectures have to do
13 with gender identity?

14 A. No.

15 Q. And did any of these lectures have
16 to do with gender dysphoria?

17 A. No.

18 Q. Do you have any other publications
19 or presentations, other than those that are
20 listed on your CV?

21 A. From the ones that are listed on
22 this résumé, I did say that I have another
23 journal publication, and a publication in
24 Oxford Bibliographies. And I have delivered
25 many presentations at academic conferences

1 during my academic career.

2 Q. And did any of those lectures have
3 to do with vital statistics?

4 A. No, they did not.

5 Q. Did any of those lectures have to do
6 with gender identity?

7 A. Could you describe to me how you
8 might mean "gender identity" in that context?

9 Q. Well, how do you understand it?

10 A. So, for me, I would think that a
11 person's identity with a gender, and that how
12 that identity might impact their lives, could
13 be a relevant variable of interest.

14 Q. And was it a subject matter of your
15 lecture, to talk about gender identity,
16 specifically?

17 A. I'm glad to give the example that
18 I'm thinking of. In my graduate work, I was
19 the research assistant to a mentorship program
20 for women in higher education. And the goal
21 of that program was to encourage the promotion
22 and advancement of women in the field.

23 And so, we focused a lot on how
24 women's identity, and the differential ways in
25 which they are treated in higher ed, can

1 impact their career success.

2 Q. Did any of those lectures have to do
3 with transgender people?

4 A. Not explicitly. We just focused on
5 if people identified as women, that they would
6 be a member of the cohort that we were
7 interested in.

8 Q. And when you say "identified as
9 women," you're referring to transgender people
10 that would identify as women? And this would
11 be accepted?

12 A. Yes. That would be accepted. There
13 was no exclusion.

14 Q. Thank you. And did any of these
15 lectures have to do with gender dysphoria?

16 A. No.

17 Q. Do you have any other publications
18 or presentations, other than those that are
19 listed on your CV?

20 A. None other than I already talked
21 about.

22 Q. Great.

23 MS. SHEW: Just an objection.

24 I think she's clarified that it's her
25 résumé that we're looking at now.

1 MS. BUCHERT: Okay.

2 BY MS. BUCHERT:

3 Q. I'll rephrase the question. Do you
4 have any other publications or presentations,
5 other than those that are listed on your
6 résumé?

7 A. Yes. I do have other publications
8 and presentations other than those that are
9 listed on my résumé. This gives a selected
10 set of the publications and presentations.
11 And I have also described those other
12 publications.

13 Q. Thank you. Let's move on to the
14 professional and civic service. According to
15 your résumé, you serve on the Advisory Board
16 of the Tennessee Violent Death Reporting
17 System.

18 Is that accurate?

19 A. Yes. That's correct.

20 Q. What is the Tennessee Violent Death
21 Reporting System?

22 A. It is a program with the Tennessee
23 Department of Health Office of the State Chief
24 Medical Examiner, to collect information
25 specifically about homicides, suicides, and

1 some select accidental deaths, such as fatal
2 drug overdoses, where the cause of death is
3 due to a violent manner.

4 And its goal is to not only monitor
5 the specific outcomes, but also build a
6 network of data from law enforcement, mental
7 health, and health records, to try to build a
8 narrative of why those violent deaths occur.

9 Q. And what is the purpose of the
10 board?

11 A. The purpose of the board is to
12 advise the members of the Chief Medical
13 Examiner's Office, who are collecting the
14 data, on the data resources that are available
15 to them. And the possible application of
16 lessons learned from the information that that
17 team collects.

18 Q. Okay. And how long have you served
19 on the board?

20 A. Since its founding. So this has
21 been about a year, in January 2019.

22 Q. And it looks like you also serve on
23 the board of directors for UNA-USA, for the
24 Nashville Cordell Hull Chapter? Is that
25 accurate?

1 A. Yes.

2 Q. What is the UNA-USA organization?

3 A. The UNA-USA is an -- is a local
4 grassroots advocacy group that seeks to
5 promote the -- I guess, understanding and
6 appreciation of the United Nations in the
7 U.S..

8 There are similar organizations in
9 other countries, and many states in the
10 United States have chapters of this
11 organization.

12 Q. And what is the purpose of the
13 board?

14 A. The purpose of the board is to craft
15 the agenda and organize events that help the
16 organization fulfill its mission of outreach
17 and education.

18 Q. And how long have you served on the
19 board?

20 A. I have served for about four years.

21 Q. Okay. And what are your duties?

22 A. I have had a variety of
23 responsibilities on that board. As a general
24 board member, I give my advice and input on
25 the agenda and activities.

1 I have helped coordinate events that
2 the chapter has held. And I served very
3 briefly as an executive officer -- as a
4 vice president, and president, for a brief
5 period.

6 Q. Thank you. I'd like to talk about
7 your opinions a little bit. You were engaged
8 to render an expert opinion in this case. Is
9 that correct?

10 A. Yes.

11 Q. And what are your opinions in this
12 case?

13 A. My opinions in this case are that I
14 really don't have much of an opinion on, you
15 know, the state's role in making
16 determinations about sex at birth. And I am
17 seeking to, you know, basically make sure that
18 I can accurately explain how the vital
19 statistics are involved in that process.

20 Q. Okay. I'm going to show you -- I'd
21 like to ask you to turn to what's been
22 premarked as "Exhibit 3." The Defendants'
23 Expert Disclosures.

24 A. Yes.

25 (Exhibit 3 marked for identification)

1 Q. Have you seen this document before?

2 A. I have seen this document before.

3 Q. And what is it?

4 A. It is the expert disclosure of my
5 supervise, Mr. Gray Bishop, and myself, to
6 matters of vital records and vital statistics
7 in this case.

8 Q. Okay. And it contains a description
9 of your expected testimony and opinions. Is
10 that correct?

11 A. Yes.

12 Q. Okay. And now, I'd like to ask you
13 to turn to what has been premarked as
14 "Exhibit 4."

15 (Exhibit 4 marked for identification)

16 A. Yes.

17 Q. And have you seen this document
18 before?

19 A. I have.

20 Q. And what is it?

21 A. It is the declaration of my
22 statements for this case.

23 Q. And if you could turn to page three.
24 Is that your signature on the declaration
25 marked on Exhibit 4?

1 A. It is.

2 Q. Is your declaration accurate, in all
3 respects?

4 A. Yes, it is.

5 Q. Is your declaration complete, in all
6 respects?

7 MS. SHEW: Object to the form.

8 A. As far as I -- I don't know. Should
9 I -- do I need to wait on something, or do
10 I --

11 MS. SHEW: No. When I make an
12 objection to the form, then you may
13 answer the question if you --

14 THE WITNESS: Okay. Thank you.

15 As far as I know, the declaration is
16 complete. It is what I prepared.

17 Q. Is there anything you want to change
18 on your declaration?

19 A. No.

20 Q. Is there anything you want to delete
21 in your declaration?

22 A. No.

23 Q. Is there anything you wish to add
24 that would -- sorry.

25 Is there anything you wish you

1 had added to your declaration?

2 A. Nothing comes to mind.

3 Q. Did you purposely leave anything out
4 of your declaration?

5 A. No.

6 Q. Do you feel you need to do any
7 additional work relating to your declaration?

8 A. No.

9 Q. Is your declaration the -- sorry.
10 Strike that.

11 Do you believe that your
12 declaration contains all the information for
13 the Court and jury to understand all the work
14 you did in this case?

15 MS. SHEW: Objection to the
16 form.

17 A. As far as to my ability to speak to
18 the use of the vital statistics, it is
19 complete.

20 Q. And do you believe that your
21 declaration contains all of the information
22 for the Court, that it needs to decide this
23 case?

24 MS. SHEW: Same objection.

25 A. I'm uncertain whether the court can

1 make a determination based solely on this
2 declaration.

3 Q. Do you believe that your declaration
4 contains all of the information for the Court
5 and jury to evaluate what you did for
6 reliability?

7 MS. SHEW: Object to the form.

8 A. I have attempted to document
9 wherever I have received information for my
10 declaration. So, in that respect, I do
11 believe that it accurately portrays the work
12 that I did to make these statements.

13 Q. Having not reviewed the reports of
14 Dr. Ettner and Dr. Taylor, you are not
15 offering an opinion in response to their
16 reports or declarations. Correct?

17 A. No. I am not responding to those
18 other reports.

19 Q. And you're not offering an opinion
20 about the opinions expressed by Dr. Ettner and
21 Dr. Taylor. Correct?

22 A. No, I am not offering opinions about
23 those other statements.

24 Q. And you are also not offering an
25 opinion on the etiology of sex. Is that

1 correct?

2 A. No. I am not able to speak to the
3 etiology of sex.

4 Q. And you are not offering an opinion
5 on the etiology of gender identity. Is that
6 correct?

7 A. That is correct.

8 Q. And you're not offering an opinion
9 on the nature of gender identity. Is that
10 correct?

11 A. That is correct.

12 Q. And you're not offering an opinion
13 on the etiology of gender dysphoria. Is that
14 correct?

15 A. That is correct.

16 Q. And you're not offering an opinion
17 on the treatment of gender dysphoria. Is that
18 correct?

19 A. That is correct.

20 Q. And you're not offering an opinion
21 on the process of gender transition for
22 transgender persons. Is that correct?

23 A. That is correct.

24 Q. And you're not an attorney. Is that
25 correct?

1 A. I am not an attorney.

2 Q. Do you consider yourself an expert
3 in the field of psychiatry?

4 A. No.

5 Q. Do you consider yourself an expert
6 in the field of psychology?

7 A. No.

8 Q. Do you consider yourself an expert
9 in the field of neurobiology?

10 A. No.

11 Q. And do you consider yourself an
12 expert in the field of endocrinology?

13 A. No.

14 Q. And do you consider yourself an
15 expert on the subject of gender dysphoria?

16 A. No.

17 Q. And do you consider yourself an
18 expert on the subject of gender identity?

19 A. No.

20 Q. Okay. Without disclosing -- oh.
21 And I want to again remind you that if you
22 need a break, just let me know.

23 A. Thank you.

24 Q. Without disclosing the substance of
25 any conversations you might have had with your

1 counsel, when did you first speak with counsel
2 with regard to this case?

3 A. I know it was in fall 2019. But I
4 can't remember the month.

5 Q. And which attorneys did you speak
6 with?

7 A. Ms. Dianna Shew. And I also
8 remember having our department's general
9 counsel, Rachel Appelt, available. I'll
10 apologize that I don't remember any of our
11 other counsel's names.

12 Q. I'm sorry. Could you spell the --
13 Rachel's name? I haven't heard that one
14 before.

15 A. Her name is Rachel; R-A-C-H-E-L.
16 And her last name is Appelt; A-P-P-E-L-T.

17 Q. Thank you.

18 A. Sorry.

19 Q. How many times have you spoken with
20 defense counsel about the case?

21 A. Two or three times. It's not been
22 many.

23 Q. And when did those conversations
24 happen?

25 A. The primary conversations that we

1 had, again, were in fall 2019. And then we
2 spoke again in preparation for my deposition
3 today.

4 Q. What did you do to prepare for
5 today's deposition?

6 A. I reviewed the -- the statements
7 that I had prepared for this case. So, the
8 declaration and the expert disclosure. I
9 also -- I received the documents an hour
10 before our meeting today. I looked at all of
11 those briefly before we talked.

12 And I also spoke with our -- our
13 attorneys.

14 Q. What aspects of your education did
15 you rely upon in forming your opinion?

16 A. My research and training is in
17 statistics. And, particularly, event
18 statistics. A conflict is a type of event.
19 And that informs my current work in studying
20 and evaluating data.

21 So, in terms of understanding how
22 data rules and data collection processes are
23 structured, that helps me explain the
24 protocols that we follow for the CDC, and
25 other agencies and researchers that we release

1 data to.

2 And that would probably be my
3 primary way in which I've used my -- my
4 background in preparation for the statements
5 here.

6 I guess I will also say, having had
7 a background in research, it's very accessible
8 for me to read academic literature when it
9 comes to my profession. And, as I explained,
10 part of my profession is about monitoring data
11 release.

12 And so, a lot of the information
13 here has been relevant for my current job.

14 Q. Without revealing any substantive
15 conversations you've had with your attorneys,
16 did anyone help you prepare the declaration?

17 A. No. I prepared this. On my own.
18 Apart from the form. Because I don't know
19 that I would have known to write this very
20 specific style of writing with the -- "I am 18
21 years of age," and all these other, you know,
22 pieces.

23 Q. Did anyone help with your
24 declaration?

25 A. Again, apart from the form of, you

1 know -- again, I had never written a
2 declaration before this case. So -- but no.
3 All other pieces -- all of the facts included
4 in this are my own writing.

5 Q. And what other information was
6 provided to you by the defense counsel?

7 MS. SHEW: Object to the form.

8 I object to the form. I also object that
9 I believe that is attorney/client
10 privilege. You're asking her what
11 information her lawyers gave her.

12 Q. And were you instructed to assume
13 any facts in your opinion?

14 A. No. I was not instructed to assume
15 anything.

16 Q. Okay. In forming your opinion, did
17 you consider any documents, other than the
18 documents you just identified?

19 A. No.

20 Q. With regard to the studies that are
21 cited in your declaration, how did you come
22 about those studies?

23 A. Some of the documents that I cited
24 in this declaration are already familiar to
25 me. I used the guide to completing the

1 facility worksheets, from the National Center
2 for Health Statistics. Really, regularly, for
3 my job responsibilities.

4 Another important aspect of my job
5 responsibility is to review IRB requests from
6 researchers for vital statistics data. And,
7 through that, I have had to learn a lot more
8 about data linkage in health data.

9 And so, that -- to help me be more
10 educated in that area of my responsibility,
11 I'm familiar with the Heron and Herchon
12 [Phonetic] articles.

13 And, to me, it was also important to
14 understand, you know, when the Centers for
15 Disease Control define our parameters, in
16 particular ways, how does that information get
17 used in subsequent research.

18 And so, I conducted additional
19 literature review of the articles that pertain
20 to correlations of fetal sex and maternal and
21 child outcomes.

22 Q. Is a birth certificate an
23 identification document?

24 MS. SHEW: Object to the form.

25 A. I believe it can be used as an

1 identification document. I also understand
2 that it can be used as a document to establish
3 citizenship. And those are the areas that I'm
4 familiar with its use.

5 Q. Are there other ways in which you
6 understand it to be used, to document, or to
7 demonstrate identity?

8 A. None that I'm aware of. I could --
9 I can speak to its use for citizenship in
10 social security enumeration. And, just from
11 my personal experience, I know that I could
12 use my birth certificate to establish a
13 portion of citizenship for my passport
14 application, for example.

15 Q. Could you talk about that
16 experience? Like what does that look like?
17 Did you --

18 A. Which experience?

19 Q. I don't really understand the
20 difference between -- those are two
21 different -- documents that you referred to.
22 One was citizenship -- as I understood your
23 statement, one was, you know, citizenship --
24 card, maybe.

25 A. Okay --

1 Q. I'm not sure exactly what you were
2 saying.

3 A. Oh, sure.

4 Q. You know, the passport question.
5 And I was just curious if you could give me
6 more background about --

7 A. Sure.

8 Q. -- about that.

9 A. Sure. So, my familiarity with the
10 use of the birth certificate as a citizenship
11 document comes from one of my job
12 responsibilities.

13 Our department shares data with the
14 Social Security Administration to help newborn
15 infants get social security numbers. And,
16 sometimes, when maybe the parents don't
17 immediately give us permission to send that
18 information to the Social Security
19 Administration, and they want to know how to
20 get a social security number for their child,
21 they need to provide certain kinds of
22 documentation to the Social Security
23 Administration.

24 And, in trying to help those
25 parents, it helps them to understand how each

1 piece of documentation fits into their
2 application.

3 And, at least with the guidance that
4 I read, the Social Security Administration is
5 clear that a birth certificate is not an
6 identification tool, but it establishes
7 citizenship.

8 And, when combined with, say, a
9 medical record, or a photo ID that can prove
10 that you are the person you claim you are,
11 that can be together sufficient to establish
12 the information to get a social security
13 number.

14 And I know that when I submit my
15 application for a passport, I provide a photo
16 ID, and my birth certificate. So -- but I'm
17 not sure how the State Department uses the
18 birth certificate in that setting.

19 Q. Are there -- so, you had to submit
20 your birth certificate to the passport agency
21 to get a passport, or to -- is that accurate?

22 MS. SHEW: Object to the form.

23 A. I seem to remember I did.

24 Q. Are there any other circumstances
25 where you submitted your birth certificate?

1 A. I'm trying to remember. It's been
2 so long since I've had to, you know, renew my
3 driver's license without my current version of
4 my driver's license. And so, I'm not
5 remembering any recent. I'm sorry.

6 Q. Oh. Other than the birth
7 certificate -- other than the passport agency?

8 A. Other than the passport agency.
9 Yeah.

10 Q. Do you agree that it's important for
11 your birth certificate to reflect your
12 identity as "female?"

13 MS. SHEW: Object to the form.

14 A. I -- you know, it's important to me
15 that my birth certificate represent the facts
16 of who I say I am.

17 MS. BUCHERT: I -- I don't know
18 how you're feeling, but I would really
19 like to take a five-minute break, if
20 that's okay with everyone.

21 Do you mind taking a break?

22 THE WITNESS: That's fine with
23 me.

24 MS. BUCHERT: Okay. Great.

25 We'll go off the record, and come back in

1 five minutes and start up again.

2 THE WITNESS: Thank you.

3 (Short break.)

4 BY MS. BUCHERT:

5 Q. Ms. Lefler, I'd like you to turn to
6 what's marked as "Exhibit 3," and would ask
7 that you take a look at paragraph one of your
8 declaration. I think it's on page six.

9 A. Okay.

10 Q. And my understanding is that this
11 paragraph states that:

12 "The Office of Vital
13 Records...extracts information reported on the
14 Tennessee Department of Health Certificate of
15 Live Birth and then compiles that information
16 into data files that are used in public
17 health surveillance, research, and government
18 administration."

19 Is that accurate?

20 A. That is accurate.

21 Q. And are those data files drawn from
22 what is known as the "Tennessee Birth
23 Statistical System?"

24 A. The data file is the birth
25 statistical system. The information for that

1 statistical system is taken from the
2 information that is entered in the birth
3 certificate.

4 Q. Let's go to page six of this
5 exhibit.

6 A. Uh-huh.

7 Q. And in paragraph two, it states
8 that:

9 "The Tennessee Birth
10 Statistical System is the product of the
11 information obtained from the Certificate of
12 Live Birth combined with computer generated
13 values, for example, mother's age at the time
14 of delivery and gestational age, and
15 information linked from death certificates,
16 Social Security feedback, and standardized
17 race and ethnicity from the National Center
18 for Health Statistics.

19 In total, the Office of Vital
20 Statistics collects and maintains data on more
21 than 300 items for any given birth that occurs
22 in the state."

23 Did I read that correctly?

24 A. You did.

25 Q. Okay. Is one of the data elements

1 collected in the Tennessee birth statistical
2 systems system a baby's sex recorded at birth?

3 A. Yes. Sex recorded at birth is on
4 the -- is in our data.

5 Q. And that information is extracted
6 from the Certificate of Live Birth, soon after
7 the baby is born. Is that correct?

8 A. That's correct.

9 Q. And that information is extracted
10 within a year of birth. Is that correct?

11 A. Yes. That's correct. We finish
12 compiling our birth statistics by April of the
13 year following that event occurring. So it
14 could be between 15 and four months.

15 So, for babies born in January 2019,
16 we just finished reviewing their data. But
17 that's the same for babies born in
18 December 2019. We have a kind of collection
19 period. And then we stop -- we stop kind of
20 updating what we keep for statistical
21 purposes.

22 Q. Okay. And is the Tennessee Birth
23 Statistical System also known as the
24 "statistical file?"

25 A. Yes. That's correct.

1 Q. Okay.

2 A. Yes. I just -- I'm a terrible
3 writer and I want to -- you know.

4 Q. Yes. And, just to clarify, this
5 is -- we're talking about the disclosures now.
6 Not the declaration.

7 A. Yes. I think that's what I'm
8 looking at.

9 Q. Okay. Great.

10 A. Yes.

11 Q. And on paragraph three of exhibit --
12 of this exhibit -- Exhibit 3 -- it states
13 that:

14 "At least some portion, if not
15 all, of these data elements are provided to
16 contract representatives, researchers,
17 government agencies, and other data users for
18 application to public health surveillance,
19 research, and administrative and audit
20 functions."

21 Did I read that accurately?

22 A. Yes.

23 Q. And, just so I understand, the
24 information that is provided to researchers,
25 is that information contained -- that

1 information is contained within a statistical
2 file.

3 Is that correct?

4 A. Yes. That's correct.

5 Q. Okay. Could we go to Exhibit 4?

6 Your declaration?

7 A. Yes.

8 Q. And if you turn to paragraph one --
9 1A -- it states that sex recorded at the time
10 of birth is:

11 "Used as a direct indicator in
12 maternal and child health outcomes in public
13 health surveillance and research."

14 Is that accurate?

15 A. Yes. That's accurate.

16 Q. And the information used for the
17 public health surveillance and research,
18 referenced in paragraph 1A of your
19 declaration, comes from the statistical file.

20 Is that accurate?

21 A. That is accurate. Yes.

22 Q. Would you agree that other states
23 also have an interest in using sex recorded at
24 the time of birth, in public health
25 surveillance and research?

1 MS. SHEW: Objection to the
2 form.

3 A. I do know that other states do use
4 sex in reporting facts in maternal and child
5 health outcomes from the birth data.

6 Q. And do you provide copies -- a copy
7 of people's Certificate of Live Birth to those
8 entities that conduct public health
9 surveillance?

10 A. Do you mean -- could you rephrase
11 your question? I'm sorry.

12 Q. Sure. Do you provide the
13 Certificate of Live Birth to those entities
14 that request information from the Office of
15 Vital Statistics for public health
16 surveillance and research?

17 A. We share birth information. This is
18 an electronic file. Not a copy of the
19 physical document of the certificate -- with
20 our other state Vital Records Offices, through
21 our interjurisdictional exchange agreement.

22 Q. I'd like to ask you to look at
23 Exhibit 6.

24 (Exhibit 6 marked for identification)

25 Q. Which is --

1 A. Okay.

2 Q. And I'm showing you what's premarked
3 as "Exhibit 6," which was provided to us by
4 defendant's counsel in discovery.

5 MS. SHEW: And it's obvious on
6 the exhibit, but for the record, this is
7 a confidential Exhibit.

8 A. I see --

9 Q. Can you see this document?

10 A. I'm sorry. I was just confirming
11 that I could see the document.

12 Q. Thank you.

13 A. I don't know if you were waiting for
14 my response.

15 Q. Have you seen this document before?

16 A. Yes, I have.

17 Q. And what is it?

18 A. It is a summary of the number of
19 births that have occurred in the state of
20 Tennessee, from 1980 to 2018, with counts by
21 the sex that is recorded on the birth
22 statistical file.

23 Q. Okay.

24 A. As I'm reading the table, it also
25 includes specific information about the

1 individual certificates that had some other
2 sex, than "male" or "female."

3 Q. And, turning to table one -- sorry.
4 Can I ask a follow-up -- I'm going to ask a
5 follow-up question to the last series of
6 questions.

7 When I asked whether you shared
8 the Certificate of Live Birth with those
9 entities that are asking for public
10 surveillance, you testified that they don't --
11 that you don't share the actual birth
12 certificates, which I understand.

13 But the question I'm hoping you
14 can answer is whether that information that's
15 shared is the statistical file with those
16 entities. That research.

17 A. That's correct. It is the
18 statistical file.

19 Q. Okay. Thank you. And then, going
20 back to table one on Exhibit 6, it shows the
21 number of births per year, by sex, from 1980
22 to 2018. Is that correct?

23 A. That is correct.

24 Q. Okay. And it shows that 43 children
25 were born during this period of time, whose

1 sex designation on their birth certificate
2 is -- is listed an "unknown."

3 Is that accurate?

4 A. That is accurate.

5 Q. Okay. I'd like to go through a
6 couple of examples -- go into table two now.
7 And this is a little hard, because you'd have
8 to --

9 A. Yes.

10 Q. -- rotate.

11 A. I can turn it.

12 Q. But, the examples I wanted to go
13 through, I'd like you to look at -- again,
14 understanding that this information will
15 remain confidential, look at the example
16 pertaining to [Redacted name], which is ninth
17 from the bottom.

18 A. Okay. I see it now.

19 Q. And I'd like you to look at that
20 row, and then go all the way to the right, to
21 the field notes.

22 A. Yes.

23 Q. And in the field note, it says that:

24 "This record was corrected by
25 affidavit to change the child's sex to 'male,'

1 but not changed on the statistical file."

2 Did I read that correctly?

3 A. Yes.

4 Q. And this is the same statistical
5 file that we've been discussing today. Right?

6 A. Yes. That's correct.

7 Q. Okay. Can we turn to the fifth row
8 from the bottom?

9 A. Is that --

10 Q. Can you see --

11 A. Is that [Redacted name]?

12 Q. Yes. I think it's [Redacted name].
13 Yes.

14 A. Okay. Yes.

15 Q. And there in the notes, it also says
16 that:

17 "The record was corrected by
18 affidavit to change the child's sex to 'male,'
19 but not changed on the statistical file."

20 Is that accurate?

21 A. That is accurate.

22 Q. And this child, sadly, died in 2005.
23 Is that correct?

24 A. That's correct.

25 Q. And the death certificate identified

1 the person as male. Is that correct?

2 A. That's correct.

3 Q. So, just so I understand, the birth
4 certificate for this person, when it was
5 issued, showed the persons sex as "male." But
6 the statistical file on the computer system
7 shows that it is "unknown."

8 Is that correct?

9 A. Yes. Our statistical file showed
10 this person as having an unknown sex. And
11 when I looked at the current version of that
12 person's record, it indicated that their sex
13 was "male" on their birth certificate. And
14 that that was a change created by an
15 affidavit.

16 Q. So, based on what we've reviewed, it
17 is possible to correct a field on a person's
18 certificate of birth, for identification
19 purposes, and have that field remain unaltered
20 on the Office of Vital Statistics statistical
21 file?

22 Is that correct?

23 MS. SHEW: Object to the form.

24 A. It is possible for differences to
25 exist between the vital records and our

1 statistical file. I do not know when that
2 affidavit was submitted.

3 If it was submitted after the period
4 at which we stopped collecting our data for
5 statistical and research purposes, then that
6 would not change our file. So, that way, our
7 statistics can remain consistent over time.

8 Q. Let's flip back to Exhibit 3, and go
9 to page seven. And, in paragraph six, the
10 first sentence states:

11 "In fulfillment of
12 its responsibilities under Tennessee State Law
13 to prepare and publish accurate vital
14 statistics of the state, and the terms of its
15 agreements with data users, the Office of
16 Vital Statistics reviews and maintains records
17 in the Birth Statistical System for their
18 completeness and legal validity."

19 Did I read that correctly?

20 A. "Their logical validity." Yes.

21 Q. And, by "Birth Statistical System,"
22 again, you're referring to the statistical
23 file. Is that correct?

24 A. That is correct.

25 Q. And do you verify logical validity

1 through the performance of conditional logic
2 tests?

3 A. Yes, we do.

4 Q. Okay. Are these conditional logic
5 tests performed before or after the
6 statistical file is closed?

7 A. They are performed before we close
8 the file.

9 Q. Okay. So there comes a time when
10 you no longer perform conditional logic test
11 on a statistical file for a given year?

12 A. That is --

13 Q. Is that correct?

14 A. That is correct.

15 MS. BUCHERT: How are you
16 doing? Do you need a break? Are you
17 going strong?

18 THE WITNESS: I'm okay. Thank
19 you.

20 MS. BUCHERT: Okay, great.

21 BY MS. BUCHERT:

22 Q. Okay. I'd like to turn now to
23 Exhibit 7.

24 (Exhibit 7 marked for identification)

25 Q. And what I'm showing you, again, is

1 information that will remain confidential.

2 It's a premarked exhibit which was provided to
3 us by the defendants' counsel in discovery.

4 Have you ever seen this
5 document before?

6 A. I couldn't tell you if I have or
7 have not. I've seen many birth certificates,
8 so I don't know if I've seen this one
9 specifically.

10 Q. What is it?

11 A. It is a -- it is a birth certificate
12 that would be issued to an individual by the
13 state.

14 Q. And it lists the sex of the child as
15 "unknown." Is that correct?

16 A. That is correct.

17 Q. And, turning to the second page of
18 the exhibit, there is a note -- electronic
19 note for the birth record that says that the
20 child was born with both sex organs. Did I
21 read that correctly?

22 A. Yes.

23 Q. So, if this child is born with both
24 sex organs, is it your opinion that they
25 cannot identify as "male" or "female?"

1 MS. SHEW: Object to the form.

2 A. I don't have an opinion on how the
3 child can be identified. That field is
4 completed at the time of birth by the medical
5 provider.

6 Q. What would they have to show in
7 order to amend the sex designation on their
8 birth certificate?

9 MS. SHEW: Object to the form.

10 A. I'm not very involved in my role, in
11 how the vital records are amended. So, I'm
12 not sure the answer to your question.

13 Q. And could a person born with
14 ambiguous genitalia, designated as "unknown"
15 on a birth certificate, be able to update the
16 sex designation on their birth certificate,
17 based on their chromosomal make up?

18 MS. SHEW: Object to the form.

19 A. Again, I'm -- I'm not sure the
20 documentation needed to amend that field on
21 the birth certificate.

22 Q. And could a person born with
23 ambiguous genitalia, designated as "unknown"
24 on their birth certificate, be able to update
25 the sex designation on their birth

1 certificate, based on their hormonal make up?

2 MS. SHEW: Object to the form.

3 A. Again, I'm not sure what
4 documentation needs to be provided to update
5 that field.

6 Q. I'd like to go back to Exhibit 4,
7 your declaration, again. And, in paragraph 1B
8 of your declaration.

9 A. Okay.

10 Q. You refer to the congenital anomaly
11 known as "hypospadias." And I believe you
12 defined it in -- you used the definition from
13 one of your sources as:

14 "The incomplete closure of the
15 male urethra resulting in the urethral meatus
16 opening on the ventral surface of the penis."

17 Is that accurate?

18 A. Yes. That's accurate.

19 Q. Okay. And you haven't done any
20 research regarding this condition. Is that
21 correct?

22 A. No. I have done no research, apart
23 from the source that I cite there, for
24 defining the term.

25 Q. And you haven't written any

1 publications about it. Is that correct?

2 A. That's correct.

3 Q. You haven't given any presentations
4 on it. Is that correct?

5 A. That's correct.

6 Q. A child born with ambiguous
7 genitalia, with hypospadias, typically would
8 have their sex recorded at birth as "unknown."
9 Is that correct?

10 MS. SHEW: Object to the form.

11 A. I don't know that.

12 Q. What sex should be recorded on the
13 birth record of a child born with ambiguous
14 genitalia and hypospadias?

15 MS. SHEW: Object to the form.

16 A. The medical provider who prepares
17 the information for the birth certificate
18 should make that determination.

19 Q. What sex should children born with
20 ambiguous genitalia, with hypospadias, be
21 reared as?

22 MS. SHEW: Object to the form.

23 A. I don't have any expertise to say.

24 Q. Are you familiar with the condition,
25 "perineoscrotal hypospadias?"

1 A. I will admit, when I received the
2 exhibits, that I looked up that term before
3 joining this deposition today.

4 Q. And people born with ambiguous
5 genitalia, with this condition, have a Y
6 chromosome. Is that correct?

7 MS. SHEW: Object to the form.

8 A. I couldn't say, specifically. I
9 very quickly looked up what that terminology
10 means.

11 Q. I'd like to turn to that exhibit.

12 A. Sure.

13 Q. I'm showing what has been premarked
14 as Exhibit 8. That's a study titled,
15 "Ambiguous Genitalia with Perineoscrotal
16 Hypospadias in 46 XY Individuals: Long-term
17 Medical, Surgical, and Psychosexual Outcome."

18 (Exhibit 8 marked for identification)

19 Q. Have you ever seen this study?

20 A. I looked at it just before our
21 meeting today.

22 Q. And this article appears to be a
23 primary research peer reviewed study. Is that
24 correct?

25 A. That is --

1 MS. SHEW: Object to the form.

2 THE WITNESS: Oh, I'm sorry.

3 That is correct. It appears to be
4 published in a peer reviewed journal.

5 BY MS. BUCHERT:

6 Q. Is this the type of study that you
7 refer to in paragraphs 1A and 1B of your
8 declaration?

9 A. The citations I make in 1A of my
10 declaration are peer reviewed publications.
11 Yes.

12 Q. And the last sentence of the first
13 paragraph of this article -- not the
14 abstract -- states that:

15 "For this group of patients,
16 there is a lack of agreement about optimal sex
17 assignment (in terms of the child developing a
18 gender identity that is congruent with his or
19 her rearing) and types of genital surgery
20 associated with the best cosmetic and
21 functional outcome."

22 Did I read that correctly?

23 A. Yes.

24 Q. Were you able to find it?

25 A. Yes. Sorry.

1 Q. I don't mean to hurry you. Take as
2 much time as you need.

3 A. Yes. I think you read that
4 correctly.

5 Q. Okay. There is a lack of a medical
6 understanding -- or, sorry -- strike that.

7 There is a lack of medical
8 consensus on the appropriate sex assignment
9 for children born with ambiguous genitalia
10 with perineoscrotal hypospadias,
11 notwithstanding the presence of a Y
12 chromosome.

13 Is that correct?

14 MS. SHEW: Object to the form.

15 We are way outside her scope here.

16 A. I wouldn't feel comfortable agreeing
17 to that statement, based on this one article,
18 and that one sentence from it.

19 Q. And people born with that condition
20 are typically reared as "male" or "female,"
21 and not as "unknown." Is that correct?

22 MS. SHEW: Object to the form.

23 A. I would have -- I have no knowledge
24 of that.

25 Q. Okay. All right. Let's move on.

1 I'd like to ask you to look at
2 Exhibit 4 again.

3 A. Okay.

4 Q. And let's go to paragraph 1C. And
5 the first sentence of this paragraph states
6 that the sex at birth is necessary for:

7 "Inclusion in sets of personal
8 identifiers used in record matching programs
9 for administrative and auditing functions."

10 Is that correct?

11 A. Yes.

12 Q. Is one of the uses of these matching
13 programs the verification of a person's
14 identity?

15 A. I could not say. I know how it is
16 used in newborn screening, but that's not the
17 same, I think, as establishing a person's
18 identity.

19 Q. Okay. Let's go back to paragraph
20 four of Exhibit 3; disclosures. And this
21 paragraph states that:

22 "The primary data users to
23 which the Office of Vital Statistics delivers
24 birth data are the National Center for Health
25 Statistics, a branch of the Center for Disease

1 Control and Prevention (CDC), the Social
2 Security Administration (SSA), and Tennessee
3 State Government agencies."

4 Did I read that correctly?

5 A. You did.

6 Q. Is one of the Tennessee State
7 Government agencies to which this statement
8 refers to, the Tennessee Department of Safety
9 and Homeland Security?

10 A. I'm not aware of our sharing birth
11 data with Safety and Homeland Security.

12 Q. Okay. For the purpose of the next
13 few questions, when I refer to a transgender
14 person, I'm referring to someone whose gender
15 identity is different from the sex they were
16 designated at birth.

17 Is that understood?

18 A. Yes.

19 Q. Are you aware that transgender
20 people are able to correct the sex designation
21 on their social security records to match
22 their gender identity?

23 A. I'm not aware of how the Social
24 Security Administration maintains its identity
25 roles.

1 Q. Are you aware that the plaintiffs in
2 this case have corrected their social security
3 records to reflect their female gender
4 identity?

5 A. I'm not aware, specifically, of
6 that.

7 Q. Are you aware that transgender
8 people are able to update their sex
9 designation on their Tennessee-issued driver's
10 licenses to match their gender identity?

11 A. I read that very briefly in, I think
12 it's Exhibit 1, that you sent me. But I would
13 have no other general knowledge of that.

14 Q. Are you aware that some of the
15 plaintiffs in this case have corrected their
16 Tennessee-issued driver's licenses to reflect
17 their female gender identity?

18 A. Again, from my quick reading of
19 Exhibit 1, I believe I picked that up.

20 Q. Would you agree that Tennessee does
21 not permit a transgender person to update the
22 designation for the sex they were deemed at
23 birth, to the sex designation consistent with
24 their gender identity?

25 A. I understand that Tennessee State

1 Law has limitations on the reasons why a
2 person can change their sex designation on
3 their birth certificate. I'm not exactly
4 familiar with the language of the law beyond
5 that.

6 Q. Would you agree that because
7 transgender people cannot update the sex
8 designation on their birth certificate to
9 reflect their gender identity, but can do
10 so -- but can do so on their social security
11 records and their Tennessee-issued driver's
12 licenses, that that creates mismatches when
13 federal agencies, or other state agencies, try
14 to verify identify?

15 MS. SHEW: Object to the form.

16 A. I'm not sure the degree to which
17 other state and federal agencies are
18 performing matches with birth certificate
19 data, after a change in that information.

20 Q. Okay. I'd like to go back to the
21 declaration once again.

22 A. Sure.

23 Q. And section 1C --

24 A. Hold on a second. Sorry.

25 Q. Take your time.

1 A. Yes. Okay. Now I have it in front
2 of me.

3 Q. Okay. Section 1C, the declaration
4 states that records from your office are
5 shared with TennCare (Medicaid) --

6 A. Yes.

7 Q. -- and other places, and that sex is
8 a data element used to establish more
9 confident matches.

10 Is that accurate?

11 A. That is accurate.

12 Q. And your declaration then cites a
13 2014 article, herein "Evaluating bias due to
14 data linkage error in electronic healthcare
15 records."

16 A. Uh-huh.

17 Q. Is that correct?

18 I'd like to look at that
19 Exhibit; Exhibit 9.

20 (Exhibit 9 marked for identification)

21 A. I have it in front of me now.

22 Q. Okay. And on page eight of this
23 article --

24 A. Oh, sorry. I went too far. Thank
25 you.

1 Q. In the "Conclusion" section, it
2 states -- in the "Conclusion" section, it
3 states:

4 "Linkage of routine data is a
5 valuable resource for health research, but our
6 study highlights the importance of evaluating
7 the potential impact of linkage error on
8 results."

9 Was that accurate?

10 A. Yes. That is their initial
11 conclusion.

12 Q. And that sounds to me like it is --
13 like it is important for there to be
14 appropriate linkage of data in order to
15 conduct some health research.

16 Is that accurate?

17 A. Yes. The study emphasizes the
18 importance that linkages be as unbiased as
19 possible, in order to make better inferences.

20 Q. And are you aware that at least one
21 plaintiff in this case has a Medicaid card
22 that identifies her as "female," even though
23 her birth certificate identifies her as
24 "male?"

25 A. I'm not aware of that. I'm sorry.

1 Q. Using the example of that plaintiff,
2 if TennCare records designate her as "female,"
3 how would a birth certificate designating her
4 as "male" serve the records matching purpose
5 that you describe in section 1C?

6 MS. SHEW: Object to the form.

7 A. There are, as I understand from my
8 conversations with TennCare, a variety of ways
9 in which they use the birth certificate data.
10 Our primary agreement with them is to
11 establish the initial claim for the mother,
12 and for potential enrollment of the child in
13 additional services.

14 But, after that initial fact of
15 birth, I'm not sure how TennCare, as an
16 agency, is using birth data to link with their
17 own records.

18 Q. If the birth certificate of a
19 transgender woman, such as the plaintiffs,
20 designate her sex as "male," but other
21 identity documents, such as the social
22 security records, Medicaid card,
23 Tennessee-issued identity card, all reflect
24 her sex as "female," won't that inconsistency
25 of inputs lead to poor data quality, and lead

1 the linkage errors?

2 MS. SHEW: Object to the form.

3 A. There are always risks when linking
4 data that you will not be able to establish
5 perfect matches. This study highlights two
6 different methods by which researchers can
7 measure the confidence of their linkage
8 approaches.

9 And my familiarity with it is
10 because I review other research protocols for
11 the use of vital statistics that involve a lot
12 of data linkage.

13 And so, this particular research is
14 attempting to explain why one method might be
15 better, when we know that any effort to link
16 multiple data systems are going to result in
17 some failures. Either a falsely positive
18 match, or a false negative match.

19 Q. But in -- with regard to the
20 conclusion, do you believe it's important to
21 have consistent data input, to be able to
22 resolve those linkage issues with electronic
23 healthcare records?

24 MS. SHEW: Object to the form.

25 A. Ideally, it would be great, from our

1 research, or data analysis perspective, to
2 have data that are internally valid and
3 consistent across data systems.

4 But, it doesn't -- there are a
5 variety of variables that that's not the case
6 for. And that's why researchers have to
7 develop additional tools to measure the
8 confidence of their linkage.

9 It's a case for a number of
10 identifiers between vital statistics,
11 Medicaid, research enrollment cohorts, that we
12 won't have perfect information to get one
13 hundred percent accurate matches across all
14 those different data sets.

15 Q. How are you doing?

16 A. I'm --

17 Q. You want to keep going?

18 A. Yes. I can keep going.

19 Q. Would you agree that in order to
20 promote and maintain nationwide uniformity in
21 the system of vital records, the forms and
22 certificates and reports of the Tennessee
23 Office of Vital Records must look to the
24 federal agency responsible for national vital
25 statistics?

1 MS. SHEW: Object to the form.

2 A. I'm not sure how other state and
3 federal agencies evaluate the authenticity or
4 validity of a birth certificate.

5 Q. I think the question was less about
6 what other states consider, than about whether
7 there's a policy objective of promoting and
8 maintaining nationwide uniformity in the
9 system of vital records; the forms of
10 certificates through reports of the Tennessee
11 Office of Vital Records; and that those
12 entities should look to federal agencies
13 responsible for national vital statistics.

14 MS. SHEW: And objection.

15 A. I'm aware of national guidelines for
16 the items that should be collected by states
17 for their vital events information. Birth
18 certificates. Death certificates. But I'm
19 aware that those guidelines are then open for
20 each state to adopt.

21 Q. I'd like to -- I'd like you to turn
22 to Exhibit 10, which is Tennessee Code
23 Annotated 68-3-202.

24 (Exhibit 10 marked for identification)

25 Q. Do you recognize this document?

1 A. I can't say I've ever seen that -- I
2 mean, apart from just before our meeting. I
3 can't say I've ever seen it, specifically,
4 before, but I can understand that it is a copy
5 of the section from our Tennessee Code
6 Annotated.

7 Q. And, based on subsection (a) of this
8 law, would you agree that in order to promote
9 and maintain nationwide uniformity in the
10 system of vital records, the forms of
11 certificates, reports of the Tennessee Office
12 of Vital Records must look to the federal
13 agency responsible for national vital
14 statistics?

15 MS. SHEW: Object to the form.

16 A. A subset -- or the section (a) of
17 this portion of the code does say that the
18 reports or other returns required by this
19 chapter shall include, as a minimum, the items
20 recommended by the federal agency responsible
21 for national vital statistics.

22 Q. And do you think that it's important
23 for the Tennessee Office of Vital Records to
24 follow that guidance?

25 MS. SHEW: Object to the form.

1 A. I believe it's important that we
2 attempt to follow the law.

3 Q. You know what? What is the National
4 Center for Health Statistics?

5 A. The National Center for Health
6 Statistics is an office at the Center for
7 Disease Control and Prevention that collects
8 vital events information from all the states
9 and jurisdictions in the United States, to
10 build national databases for vital events
11 information.

12 Q. And is the National Center for
13 Health Statistics the federal agency
14 responsible for national vital statistics
15 referred to in subsection (a) of Tennessee
16 Code 68-3-202?

17 A. That would be my understanding.

18 Q. And does the Tennessee Office of
19 Vital Records look to NCHS for guidance on the
20 collection, maintenance, and recording of
21 vital statistics?

22 A. Yes. We work in close partnership
23 with our contract representatives at the CDC
24 to guide us on our data collection and
25 maintenance.

1 Q. And do you think that it's important
2 for the Tennessee Office of Vital Records to
3 follow guidance from NCHS?

4 A. Yes. Whenever it's possible for us
5 to follow the guidance from NCHS, I think that
6 it -- that we do so.

7 Q. I'd like to move to Exhibit 11.
8 (Exhibit 11 marked for identification)

9 Q. Do you recognize this document?

10 A. I have seen this document before.
11 Yes.

12 Q. And what is it?

13 A. It is the Model State Vital
14 Statistics Act and Regulations.

15 Q. And that was published in 1992? Is
16 that correct?

17 A. Yes.

18 Q. If we could go to the preface, which
19 is on page five of the PDF? The second
20 paragraph; specifically the second and third
21 sentences, state:

22 "The Model Act and Regulations
23 provide detailed guidance to State registrars
24 of vital statistics and State legislators who
25 are considering revision of their own State

1 vital statistics laws and regulations.

2 The Model Act and Regulations
3 serve to promote uniformity among States in
4 definitions, registration practices,
5 disclosure and issuance procedures, and in
6 many other functions that comprise a State
7 system of vital statistics."

8 Did I read that correctly?

9 A. Yes, you did.

10 Q. Okay. Do you agree with the
11 statement?

12 MS. SHEW: Object to the form.

13 A. I agree that that is the purpose of
14 the Model Act.

15 Q. And could we turn to page 10 of the
16 document? I think it's page 21 of the PDF.

17 And Section 21, paragraph (d),
18 states as follows:

19 "Upon receipt of a certified
20 copy of an order of (a court of competent
21 jurisdiction) indicating the sex of an
22 individual born in this State has been changed
23 by surgical procedure and whether such
24 individual's name has been changed, the
25 certificate of birth of such individual shall

1 be amended as prescribed by regulation."

2 Did I read that correctly?

3 A. I'm sorry. I'm still actually
4 trying to find --

5 Q. Oh. Take your time.

6 A. So -- I'm sorry. It would be
7 easier -- could you give me the section of
8 that again?

9 Q. Yes. It's page 19 of the PDF, and
10 it's under Section 21; Amendment of Vital
11 Records.

12 A. Oh, okay. I'm sorry. I got
13 confused with 21. I'm sorry. I went to page
14 21. Would you please reread the section that
15 you're referring to?

16 Q. Sure. So, it's Section 21,
17 subsection (d).

18 A. Okay.

19 Q. And it states the Model Act -- I'm
20 sorry.

21 "Upon receipt of a certified
22 copy of an order of (a court of competent
23 jurisdiction) indicating the sex of an
24 individual born in this State has been changed
25 by surgical procedure and whether such

1 individual's name has been changed, the
2 certificate of birth of such individual shall
3 be amended as prescribed by regulation."

4 Did I read that correctly?

5 A. You did read that correctly.

6 Q. Would you agree that Tennessee's
7 laws and regulations are inconsistent with the
8 guidance of the National Center for Health
9 Statistics?

10 MS. SHEW: Object to the form.

11 A. I'm not familiar enough with the
12 language of the Tennessee State Law to say
13 specifically.

14 Q. Could you say -- repeat, again, what
15 your understanding of the Tennessee law is?

16 MS. SHEW: Object to the form.

17 Q. With regard to amending. Could you
18 repeat, again, for me what your understanding
19 is of the Tennessee law that is at issue in
20 this case?

21 MS. SHEW: Object to the form.

22 A. As I understand it, the question
23 regards the situations in which a person may
24 change their sex designation on their birth
25 certificate, according to Tennessee law.

1 Q. And do you understand that to be
2 consistent with this provision in the National
3 Center for Health Statistics Model Act?

4 MS. SHEW: Object to the form.

5 A. I may have to be able to compare the
6 language of the section of the state law,
7 like, with the section we're talking about
8 here.

9 Q. And the last sentence states that --
10 strike that.

11 As we just established, though,
12 the Model State Vital Statistics Act,
13 published by the National Center for Health
14 Statistics, permits the amendment of the sex
15 designation on a person's birth certificate
16 following a person's change in sex, as a
17 result of a surgical procedure.

18 Is that accurate?

19 MS. SHEW: Object to the form.

20 A. The way I would understand this
21 section is, it describes the criteria by which
22 a state may establish sufficient cause to
23 change the sex designation of a person on
24 their birth certificate.

25 Q. Are you aware that 48 states permit

1 a transgender person to update the designation
2 that they were deemed at birth on their birth
3 certificate, to the sex designation consistent
4 with their gender identity?

5 A. I am aware that other states -- I
6 think -- I think I am aware it is 48 states do
7 allow individuals to -- in some place on their
8 birth record, to designate the gender identity
9 that they identify with.

10 Q. Would you agree that those states
11 report similar information to the National
12 Center for Health Statistics?

13 A. Yes. All states report sex at the
14 time of birth, to the Centers for Disease
15 Control.

16 Q. Would you agree that those states
17 report similar information to the Social
18 Security Administration?

19 A. Yes. As far as I know, other states
20 participate in the same program that we do,
21 and have the same reporting requirements.

22 Q. Would you agree that Tennessee's
23 policy is an outlier in the nation's system of
24 vital statistics, when it comes to permitting
25 a trans person to update the designation of

1 the sex they were deemed at birth, to the sex
2 designation consistent with their gender
3 identity?

4 MS. SHEW: Object to the form.

5 A. I'm not sure I could define what an
6 outlier is in this situation.

7 Q. Would you agree that other states
8 have similar interest to Tennessee's interest
9 in how our vital statistics are used to
10 conduct research?

11 A. I understand, from our conversations
12 that we have with other state Vital Records
13 Offices, and health statistics divisions, that
14 they do have a strong interest in providing
15 high quality and reliable data to researchers
16 and health epidemiologists.

17 Q. Would you agree that other states
18 have similar interest to Tennessee's interest,
19 in how vital statistics are used to verify a
20 person's identity?

21 A. I can't speak, you know, formally to
22 all states, because every state has different
23 data sharing regulations and policies.

24 So, I don't know if I could make a
25 similar kind of comment, other than to say

1 that there are likely many states that use
2 their data to assist researchers and federal
3 agencies.

4 Q. And would you agree that other
5 states permit transgender people to update the
6 sex designation on their birth certificate, so
7 that they reflect their gender identity?

8 A. I am aware of other states'
9 practices with respect to collecting and
10 modifying information with respect to sex and
11 gender on birth certificates.

12 MS. BUCHERT: Let's take
13 another five-minute break, if that's okay
14 with y'all. And come back at 3:51..

15 We are off the record.

16 (Short break.)

17 MS. BUCHERT: I don't have any
18 more questions today, Ms. Lefler. That
19 would conclude my portion of the
20 deposition.

21 Do you have any questions for
22 Ms. Lefler, Ms. Shew?

23 MS. SHEW: I have no questions
24 for Ms. Lefler. We are finished. All
25 right. She would like to read and sign.

1 Anything else we need to wrap-up
2 today? All right.

3 MS. BUCHERT: Thank you
4 everyone.

5 MS. SHEW: Thanks everyone.
6 Thanks Vanessa.

7 THE WITNESS: Thank you.

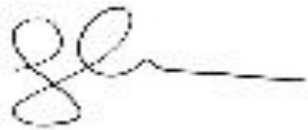
8 (Whereupon, the deposition adjourned
9 at 2:54 p.m.)
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C E R T I F I C A T E

I, Giselle Mitchell-Margerum, RPR, CRI, CCR,
Licensed Court Reporter, Tennessee, do hereby certify
that the witness was first duly sworn by me and that I
was authorized to and did report said proceedings.

I further certify that the foregoing transcript is
a true and correct record of the proceedings; that said
proceedings were taken by me stenographically and
thereafter reduced to typewriting under my supervision;
that reading and signing was requested; and that I am
neither attorney nor counsel for, nor related to or
employed by, any of the parties to the action in which
this deposition was taken; and that I have no interest,
financial or otherwise, in this case.

IN WITNESS WHEREOF, I have hereunto set my
hand this 26th day of May 2020.



GISELLE MITCHELL-MARGERUM, RPR, CRI, CCR, LCR

CERTIFICATE OF DEPONENT

I, VANESSA LEFLER, hereby certify that I have read the foregoing pages, numbered 1 through 87, of my deposition of testimony taken in these proceedings on Friday, May 22, 2020 and, with the exception of the changes listed on the next page and/or corrections, if any, find them to be a true and accurate transcription thereof.

Signed:

Name: VANESSA LEFLER

Date:

ERRATA SHEET

Case Name: Kayla Gore, et al. v. William Byron Lee, al.

Witness Name: VANESSA LEFLER

Date:

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Subscribed and sworn to before

me this date day of month , 2020.

VANESSA LEFLER

/	accepted (2) 27:11,12	Administration (9) 18:24;44:14,19,23;45:4; 47:18;68:2,24;84:18	agency (8) 45:20;46:7,8;73:16; 75:24;77:13,20;78:13
/_ (16) 90:5,6,7,8,9,10,11,12,13, 14,15,16,17,18,19,20	access (3) 11:21;12:20;15:20 accessible (1) 40:7	administrative (2) 50:19;67:9 Administrator (1) 18:12	agenda (2) 30:15,25 agree (15) 46:10;51:22;69:20;70:6; 75:19;77:8;80:10,13;82:6; 84:10,16,22;85:7,17;86:4
[accidental (1) 29:1	admit (1) 64:1	agreed (2) 8:18,25 agreeing (1) 66:16
[Phonetic] (1) 42:12 [Redacted (3) 55:16;56:11,12	accommodate (1) 9:16 according (4) 19:20;22:24;28:14;82:25 accurate (30) 9:25;18:5;19:23;23:1; 24:1,2;25:6;28:18;29:25; 33:2;45:21;47:19,20;51:14, 15,20,21;55:3,4;56:20,21; 58:13;62:17,18;71:10,11; 72:9,16;75:13;83:18	adopt (1) 76:20 advancement (1) 26:22 advice (1) 30:24 advise (1) 29:12 Advisory (1) 28:15 advocacy (1) 30:4 affidavit (4) 55:25;56:18;57:15;58:2 after (5) 49:6;58:3;59:5;70:19; 73:14 afternoon (1) 6:9 again (18) 37:21;39:1,2;40:25;41:1; 47:1;55:13;58:22;59:25; 61:19;62:3,7;67:2;69:18; 70:21;81:8;82:14,18 age (6) 14:12,15,20;40:21;48:13, 14 agencies (12) 19:1,14;39:25;50:17; 68:3,7;70:13,13,17;76:3,12; 86:3	al (1) 90:2 alliances (1) 22:12 allow (2) 13:22;84:7 Along (1) 6:19 already (2) 27:20;41:24 also (26) 6:20,23;7:9;14:13,18,22; 18:23,24;22:11;24:15;25:4; 28:11;29:5,22;35:24;38:7; 39:9,12;40:6;41:8;42:13; 43:1;49:23;51:23;53:24; 56:15 Although (1) 7:18 always (1) 74:3 ambiguous (9) 10:6;61:14,23;63:6,13,
A	ability (2) 11:19;34:17 able (11) 7:22;8:13;36:2;61:15,24; 65:24;68:20;69:8;74:4,21; 83:5 abortion (4) 12:20,25;14:10;15:20 abortions (4) 14:9,14,21,22 about (46) 10:21;12:18,24;13:20; 14:2,4,18,22;15:4,8,9,20; 17:25;18:8,17;19:17,18; 21:4,8;22:13,15;24:12,16; 26:15;27:21;28:25;29:21; 30:20;31:6,16;35:20,22; 38:20;40:10;41:22;42:8; 43:15;44:6,8;50:5;53:25; 63:1;65:16;76:5,6;83:7 abstract (1) 65:14 academic (3) 25:25;26:1;40:8	advised (1) 10:17;31:18;35:11;50:21 across (2) 75:3,13 Act (7) 79:14,22;80:2,14;81:19; 83:3,12 activities (1) 30:25 actual (1) 54:11 actually (2) 19:12;81:3 add (1) 33:23 added (1) 34:1 additional (4) 34:7;42:18;73:13;75:7 adjourned (1) 87:8	

20;64:4,15;66:9	appears (3)	86:2	baby (1)
amend (2)	18:3;64:22;65:3	assistant (1)	49:7
61:7,20	Appelt (2)	26:19	baby's (1)
amended (5)	38:9,16	associated (3)	49:2
16:1,21;61:11;81:1;82:3	A-P-P-E-L-T (1)	17:10,18;65:20	bachelor's (2)
amending (1)	38:16	assume (3)	22:25;23:10
82:17	application (5)	8:23;41:12,14	back (8)
Amendment (2)	29:15;43:14;45:2,15;	attempt (2)	14:1;46:25;54:20;58:8;
81:10;83:14	50:18	21:9;78:2	62:6;67:19;70:20;86:14
among (2)	apply (1)	attempted (1)	background (3)
21:9;80:3	21:20	35:8	40:4,7;44:6
analysis (2)	appreciation (1)	attempting (1)	based (7)
19:12;75:1	30:6	74:14	25:10;35:1;57:16;61:17;
Anne (1)	approaches (1)	Attorney (6)	62:1;66:17;77:7
12:1	74:8	7:7,10;15:18,22;36:24;	basically (1)
Annotated (2)	appropriate (2)	37:1	31:17
76:23;77:6	66:8;72:14	attorney/client (1)	because (8)
anomaly (1)	April (2)	41:9	8:12;14:1;16:18;40:18;
62:10	18:13;49:12	attorneys (5)	55:7;70:6;74:10;85:22
another (6)	area (1)	9:11;15:12;38:5;39:13;	becoming (1)
8:17;22:7;24:10;25:22;	42:10	40:15	19:2
42:4;86:13	areas (3)	audibly (1)	been (20)
answer (10)	21:25;22:4;43:3	9:3	7:13;12:9,11;16:5,11;
8:22;9:2,10;10:9,13,17;	article (5)	audit (1)	17:22;18:10,11;29:21;
22:17;33:13;54:14;61:12	64:22;65:13;66:17;71:13,	50:19	31:21;32:13;38:21;40:13;
answering (3)	23	auditing (1)	46:1;56:5;64:13;80:22,24;
8:15,16;9:18	articles (2)	67:9	81:24;82:1
anyone (4)	42:12,19	authenticity (1)	Before (31)
7:22;9:17;40:16,23	asked (6)	76:3	6:4;7:15;8:15,16;12:10,
Anything (9)	9:8;10:21;14:18,22;15:5;	available (2)	13,14;15:16;16:13,14;18:2;
15:1;24:19;33:17,20,23,	54:7	29:14;38:9	19:2,6,19;32:1,2,18;38:14;
25;34:3;41:15;87:1	asking (4)	aware (16)	39:10,11;41:2;53:15;59:5,
Apart (4)	7:20;8:14;41:10;54:9	43:8;68:10,19,23;69:1,5,	7;60:5;64:2,20;77:2,4;
40:18,25;62:22;77:2	aspect (1)	7,14;72:20,25;76:15,19;	79:10;90:21
apologize (2)	42:4	83:25;84:5,6;86:8	begin (1)
13:25;38:10	aspects (1)	B	6:4
appearance (1)	39:14		being (2)
14:2	assignment (2)	babies (2)	6:8,17
appearances (1)	65:17;66:8		believe (14)
7:5	assist (1)	49:15,17	12:16;13:9;16:22;17:4;

34:11,20;35:3,11;41:9; 42:25;62:11;69:19;74:20; 78:1 best (3) 17:16,20;65:20 better (2) 72:19;74:15 between (5) 22:18;43:20;49:14;57:25; 75:10 beyond (1) 70:4 bias (1) 71:13 Bibliographies (2) 24:16;25:24 bilaterally (1) 21:13 biology (1) 24:1 birth (86) 13:23;15:7,11;18:17; 31:16;42:22;43:12;44:10; 45:5,16,18,20,25;46:6,11, 15;47:15,22,24;48:2,9,12, 21;49:1,2,3,6,10,12,22; 51:10,24;52:5,7,13,17; 53:21;54:8,11;55:1;57:3,13, 18;58:17,21;60:7,11,19; 61:4,8,15,16,21,24,25;63:8, 13,17;67:6,24;68:10,16; 69:23;70:3,8,18;72:23;73:3, 9,15,16,18;76:4,17;80:25; 82:2,24;83:15,24;84:2,2,8, 14;85:1;86:6,11 birthrate (1) 14:11 births (2) 53:19;54:21 Bishop (1)	32:5 bit (1) 31:7 Board (10) 28:15;29:10,11,19,23; 30:13,14,19,23,24 Borelli (1) 6:20 born (16) 49:7,15,17;54:25;60:20, 23;61:13,22;63:6,13,19; 64:4;66:9,19;80:22;81:24 both (2) 60:20,23 bottom (2) 55:17;56:8 branch (1) 67:25 break (10) 9:14,17,19;37:22;46:19, 21;47:3;59:16;86:13,16 brief (2) 19:4;31:4 briefly (3) 31:3;39:11;69:11 BUCHERT (18) 6:3,11,15,18;7:4,14;28:1, 2;46:17,24;47:4;59:15,20, 21;65:5;86:12,17;87:3 build (3) 29:5,7;78:10 Byron (1) 90:2	11;53:9;54:4,14;55:11; 56:7,10;58:7;61:3;70:2,9, 10;74:6;75:18;77:4 cannot (4) 8:11;9:4;60:25;70:7 can't (6) 9:19;10:20;38:4;77:1,3; 85:21 capacity (1) 15:24 card (4) 43:24;72:21;73:22,23 career (2) 26:1;27:1 carefully (1) 10:13 case (30) 7:9;12:18,19;13:8;14:3; 15:4,16,19;16:2;17:10,18; 21:21;31:8,12,13;32:7,22; 34:14,23;38:2,20;39:7; 41:2;69:2,15;72:21;75:5,9; 82:20;90:2 cause (2) 29:2;83:22 CDC (3) 39:24;68:1;78:23 Center (12) 42:1;48:17;67:24,25; 78:4,5,6,12;82:8;83:3,13; 84:12 Centers (3) 18:22;42:14;84:14 certain (2) 14:14;44:21 certificate (50) 13:24;15:7,11;42:22; 43:12;44:10;45:5,16,18,20, 25;46:7,11,15;47:14;48:3, 11;49:6;52:7,13,19;54:8;	55:1;56:25;57:4,13,18; 60:11;61:8,15,16,21,24; 62:1;63:17;70:3,8,18; 72:23;73:3,9,18;76:4; 80:25;82:2,25;83:15,24; 84:3;86:6 certificates (10) 48:15;54:1,12;60:7; 75:22;76:10,18,18;77:11; 86:11 certified (2) 80:19;81:21 change (11) 13:23;33:17;55:25;56:18; 57:14;58:6;70:2,19;82:24; 83:16,23 changed (6) 56:1,19;80:22,24;81:24; 82:1 Chapter (3) 29:24;31:2;77:19 chapters (1) 30:10 characteristics (1) 15:9 Chief (2) 28:23;29:12 child (13) 42:21;44:20;51:12;52:4; 56:22;60:14,20,23;61:3; 63:6,13;65:17;73:12 children (3) 54:24;63:19;66:9 child's (2) 55:25;56:18 chromosomal (1) 61:17 chromosome (2) 64:6;66:12 circumstances (1)
	C		
	can (28) 10:22;16:5,8;20:15; 22:13;24:8;26:25;31:18; 34:25;42:25;43:2,9;45:9,		

45:24	collected (2)	completeness (1)	65:18
citations (1)	49:1;76:16	58:18	consensus (1)
65:9	collecting (3)	completing (1)	66:8
cite (1)	29:13;58:4;86:9	41:25	consider (8)
62:23	collection (5)	comprise (1)	37:2,5,8,11,14,17;41:17;
cited (2)	18:16;39:22;49:18;78:20,	80:6	76:6
41:21,23	24	computer (3)	considering (1)
cites (1)	collects (4)	21:18;48:12;57:6	79:25
71:12	12:24;29:17;48:20;78:7	concerns (1)	consistent (8)
citizenship (7)	College (1)	16:23	11:5;58:7;69:23;74:21;
43:3,9,13,22,23;44:10;	23:4	conclude (1)	75:3;83:2;84:3;85:2
45:7	combination (1)	86:19	contained (2)
civic (1)	21:17	Conclusion (4)	50:25;51:1
28:14	combined (2)	72:1,2,11;74:20	contains (4)
claim (2)	45:8;48:12	condition (4)	32:8;34:12,21;35:4
45:10;73:11	Combs (1)	62:20;63:24;64:5;66:19	content (2)
clarified (1)	10:25	conditional (3)	14:4;18:8
27:24	come (3)	59:1,4,10	context (1)
clarify (2)	41:21;46:25;86:14	conduct (3)	26:8
6:5;50:4	comes (6)	52:8;72:15;85:10	contract (2)
clear (5)	34:2;40:9;44:11;51:19;	conducted (1)	50:16;78:23
8:3;9:5,12,13;45:5	59:9;84:24	42:18	Control (5)
close (2)	comfortable (1)	conferences (1)	18:23;42:15;68:1;78:7;
59:7;78:22	66:16	25:25	84:15
closed (1)	comment (1)	confidence (2)	conversations (6)
59:6	85:25	74:7;75:8	37:25;38:23,25;40:15;
closure (1)	compare (1)	confident (1)	73:8;85:11
62:14	83:5	71:9	coordinate (1)
co-author (1)	competent (2)	confidential (3)	31:1
22:16	80:20;81:22	53:7;55:15;60:1	copies (2)
Code (4)	compiles (1)	confirming (1)	11:15;52:6
76:22;77:5,17;78:16	47:15	53:10	copy (5)
cohort (1)	compiling (2)	conflict (8)	52:6,18;77:4;80:20;81:22
27:6	19:13;49:12	20:19,23;21:1,12,23,24;	Cordell (1)
cohorts (1)	complaint (3)	22:8;39:18	29:24
75:11	16:2,21,25	confused (1)	correct (64)
colleague (1)	complete (5)	81:13	6:14;19:24;23:17,18,20,
6:20	9:25;24:7;33:5,16;34:19	congenital (1)	21,23,24;28:19;31:9;32:10;
collect (2)	completed (1)	62:10	35:16,21;36:1,6,7,10,11,14,
15:10;28:24	61:4	congruent (1)	15,18,19,22,23,25;49:7,8,

10,11,25;51:3,4;54:17,22, 23;56:6,23,24;57:1,2,8,17, 22;58:23,24;59:13,14; 60:15,16;62:21;63:1,2,4,5, 9;64:6,24;65:3;66:13,21; 67:10;68:20;71:17;79:16	courses (3) 20:11,13,17	day (2) 10:23;90:22	80:4
corrected (4) 55:24;56:17;69:2,15	court (9) 7:21;8:12;9:3;34:13,22, 25;35:4;80:20;81:22	death (8) 18:17,18;28:16,20;29:2; 48:15;56:25;76:18	degree (9) 22:25;23:3,6,11,14,16,19, 25:70:16
correctly (11) 48:23;56:2;58:19;60:21; 65:22;66:4;68:4;80:8;81:2; 82:4,5	craft (1) 30:14	deaths (2) 29:1,8	degrees (1) 23:9
correlations (1) 42:20	created (1) 57:14	December (1) 49:18	delete (1) 33:20
cosmetic (1) 65:20	creates (1) 70:12	decide (2) 21:13;34:22	delivered (1) 25:24
Could (25) 11:24;15:8;21:20;26:7, 12;32:23;38:12;43:8,11,15; 44:5;49:14;51:5;52:10; 53:11;61:13,22;67:15; 79:18;80:15;81:7;82:14,17; 85:5,24	criteria (1) 83:21	Declaration (34) 16:21;32:21,24;33:2,5,15, 18,21;34:1,4,7,9,12,21;35:2, 3,10;39:8;40:16,24;41:2,21, 24;47:8;50:6;51:6,19;62:7, 8;65:8,10;70:21;71:3,12	delivers (1) 67:23
couldn't (3) 15:15;60:6;64:8	curious (1) 44:5	declarations (3) 17:18,19;35:16	delivery (1) 48:14
Council (4) 22:7,14,21;24:13	current (6) 12:5,7;39:19;40:13;46:3; 57:11	deemed (3) 69:22;84:2;85:1	demonstrate (1) 43:7
counsel (8) 6:5;38:1,1,9,20;41:6; 53:4;60:3	curriculum (1) 24:7	defendant (1) 13:7	Department (12) 12:3;15:11;19:6,19;20:4, 9,12;28:23;44:13;45:17; 47:14;68:8
counsel's (1) 38:11	CV (3) 25:4,20;27:19	defendants (3) 7:5,8;11:10	department's (1) 38:8
countries (4) 21:9,12;22:20;30:9	D	Defendants' (2) 31:22;60:3	deposed (2) 12:10,11
country (1) 21:12	data (54) 13:1;15:7;18:16,25; 19:12;24:22;25:10;29:6,14, 14;39:20,22,22;40:1,10; 42:6,8,8;44:13;47:16,21,24; 48:20,25;49:4,16;50:15,17; 52:5;58:4,15;67:22,24; 68:11;70:19;71:8,14;72:4, 14;73:9,16,25;74:4,12,16, 21;75:1,2,3,14;78:24;85:15, 23;86:2	defendant's (1) 53:4	deposition (8) 6:7;7:16,18;39:2,5;64:3; 86:20;87:8
counts (1) 53:20	databases (1) 78:10	defense (2) 38:20;41:6	describe (3) 12:23;26:7;73:5
couple (1) 55:6	date (2) 15:15;90:22	define (2) 42:15;85:5	described (2) 14:7;28:11
		defined (1) 62:12	describes (1) 83:21
		defining (1) 62:24	description (1) 32:8
		definition (1) 62:12	design (1) 21:19
		definitions (1)	designate (3) 73:2,20;84:8
			designated (3)

61:14,23;68:16	32:4;39:8;80:5	31:14;33:8;38:10;40:18;	effort (3)
designating (1)	Disclosures (3)	43:19;44:16;46:17;53:13;	10:12,16;74:15
73:3	31:23;50:5;67:20	54:10,11;60:8;61:2;63:11,	eight (1)
designation (19)	discovery (2)	23;66:1;85:24;86:17	71:22
13:23;55:1;61:7,16,25;	53:4;60:3	down (2)	either (5)
68:20;69:9,22,23;70:2,8;	discussing (1)	8:13;9:4	22:1;24:18,23;25:1;74:17
82:24;83:15,23;84:1,3,25;	56:5	Dr (6)	electronic (4)
85:2;86:6	Disease (5)	17:3,6;35:14,14,20,21	52:18;60:18;71:14;74:22
detailed (1)	18:22;42:15;67:25;78:7;	drawn (1)	electronically (1)
79:23	84:14	47:21	11:16
determination (2)	disputes (1)	driver's (5)	element (1)
35:1;63:18	21:10	46:3,4;69:9,16;70:11	71:8
determinations (1)	dissertation (3)	drug (1)	elements (2)
31:16	21:1,4,8	29:2	48:25;50:15
develop (2)	Division (1)	due (2)	else (2)
21:18;75:7	19:10	29:3;71:13	15:1;87:1
developing (1)	divisions (2)	duly (1)	emphasizes (1)
65:17	19:14;85:13	7:13	72:17
Dianna (2)	divorce (1)	during (3)	employed (1)
7:6;38:7	18:18	14:2;26:1;54:25	19:4
died (1)	doctoral (3)	duties (3)	encourage (1)
56:22	20:25;21:3,7	18:14;19:9;30:21	26:21
difference (1)	document (22)	dysphoria (6)	endocrinology (2)
43:20	16:13,14;17:13;18:1;	25:2,16;27:15;36:13,17;	23:20;37:12
differences (1)	32:1,2,17;35:8;42:23;43:1,	37:15	enforcement (1)
57:24	2,6;44:11;52:19;53:9,11,15;	E	29:6
different (6)	60:5;76:25;79:9,10;80:16		engaged (1)
25:5;43:21;68:15;74:6;	documentation (4)	each (4)	31:7
75:14;85:22	44:22;45:1;61:20;62:4	8:13;14:8;44:25;76:20	enjoyed (1)
differential (1)	documents (6)	easier (2)	21:2
26:24	39:9;41:17,18,23;43:21;	7:17;81:7	enough (1)
direct (1)	73:21	easy (1)	82:11
51:11	doesn't (1)	11:21	enrollment (2)
Director (3)	75:4	ed (1)	73:12;75:11
12:7;18:11;19:3	doing (3)	26:25	entered (1)
directors (1)	7:20;59:16;75:15	educated (1)	48:2
29:23	done (3)	42:10	entire (1)
disclosing (2)	20:22;62:19,22	education (3)	20:9
37:20,24	don't (23)	26:20;30:17;39:14	entities (5)
disclosure (3)	17:4,17;23:16,19,22,25;		52:8,13;54:9,16;76:12

enumeration (1) 43:10	ever (7) 12:9,12;15:17;60:4; 64:19;77:1,3	57:25	falsely (1) 74:17
epidemiologists (1) 85:16	every (3) 10:12,16;85:22	expected (1) 32:9	familiar (6) 41:24;42:11;43:4;63:24; 70:4;82:11
ERRATA (1) 90:1	everyone (4) 7:18;46:20;87:4,5	experience (3) 43:11,16,18	familiarity (2) 44:9;74:9
error (2) 71:14;72:7	exactly (3) 14:6;44:1;70:3	experiments (3) 21:22;22:9;24:17	far (5) 33:8,15;34:17;71:24; 84:19
errors (1) 74:1	EXAMINATION (1) 7:14	expert (15) 13:10;17:2,5,9,19;31:8, 23;32:4;37:2,5,8,12,15,18; 39:8	fatal (1) 29:1
establish (7) 43:2,12;45:11;71:8; 73:11;74:4;83:22	Examiner (1) 28:24	expertise (1) 63:23	features (1) 21:19
established (1) 83:11	Examiner's (1) 29:13	explain (3) 31:18;39:23;74:14	federal (9) 70:13,17;75:24;76:3,12; 77:12,20;78:13;86:2
establishes (1) 45:6	example (6) 21:11;26:17;43:14;48:13; 55:15;73:1	explained (1) 40:9	feedback (1) 48:16
establishing (1) 67:17	examples (3) 20:16;55:6,12	explicitly (1) 27:4	feel (2) 34:6;66:16
estimation (1) 14:19	except (1) 6:6	expressed (1) 35:20	feeling (1) 46:18
et (1) 90:2	exchange (1) 52:21	extent (1) 14:16	female (9) 46:12;54:2;60:25;66:20; 69:3,17;72:22;73:2,24
ethnicity (1) 48:17	exclusion (1) 27:13	extracted (2) 49:5,9	fetal (2) 18:18;42:20
etiology (4) 35:25;36:3,5,13	executive (1) 31:3	F	few (3) 17:25;18:7;68:13
Ettner (3) 17:3;35:14,20	Exhibit (42) 16:5,10,12;17:22,23; 31:22,25;32:14,15,25;47:6; 48:5;50:11,12,12;51:5; 52:23,24;53:3,6,7;54:20; 58:8;59:23,24;60:2,18; 62:6;64:11,14,18;67:2,20; 69:12,19;71:19,19,20; 76:22,24;79:7,8	facility (1) 42:1	field (12) 26:22;37:3,6,9,12;55:21, 23;57:17,19;61:3,20;62:5
evaluate (2) 35:5;76:3		fact (1) 73:14	fifth (1) 56:7
evaluating (3) 39:20;71:13;72:6		facts (4) 41:3,13;46:15;52:4	file (20) 47:24;49:24;51:2,19; 52:18;53:22;54:15,18;56:1, 5,19;57:6,9,21;58:1,6,23; 59:6,8,11
even (1) 72:22		failures (1) 74:17	
event (3) 39:17,18;49:13		fall (3) 15:14;38:3;39:1	
events (7) 18:16,22;30:15;31:1; 76:17;78:8,10	exhibits (3) 11:9,12;64:2	false (1) 74:18	
	exist (1)		

files (3) 19:13;47:16,21	64:7;65:1;66:14,22;70:15; 73:6;74:2,24;76:1;77:15, 25;80:12;82:10,16,21;83:4, 19;85:4	50:20;67:9;80:6	goal (2) 26:20;29:4
find (2) 65:24;81:4		G	going (8) 8:23;31:20;54:4,19; 59:17;74:16;75:17,18
fine (1) 46:22	formally (1) 85:21	game (1) 21:17	gone (1) 17:12
finish (3) 8:14,16;49:11	forming (2) 39:15;41:16	gave (1) 41:11	Good (1) 6:9
finished (3) 9:18;49:16;86:24	forms (3) 75:21;76:9;77:10	gender (31) 11:5;13:23;24:24;25:2, 13,16;26:6,8,11,15;27:15; 36:5,9,13,17,21;37:15,18; 65:18;68:14,22;69:3,10,17, 24;70:9;84:4,8;85:2;86:7, 11	Gore (3) 10:25;11:4;90:2
firm (1) 6:25	founding (1) 29:20		Gould (1) 7:1
first (5) 15:3;38:1;58:10;65:12; 67:5	four (3) 30:20;49:14;67:20	General (5) 15:18,22;30:23;38:8; 69:13	government (6) 18:25;19:14;47:17;50:17; 68:3,7
fits (1) 45:1	6:25;7:9;9:24;12:25; 15:11;16:23;23:3,11,11; 25:21;29:6,16;40:18,25; 42:1,5;43:10;44:11;47:21; 48:1,11,15,17;49:6;51:19; 52:5,14;53:20;54:21;55:17; 56:8;62:12,23;66:18;68:15; 69:18;71:4;73:7;74:25; 77:2,5;78:8;79:3,5;85:11; 90:4	General's (2) 7:7,10	graduate (2) 23:9;26:18
five (3) 20:2;47:1;79:19		generated (1) 48:12	grassroots (1) 30:4
five-minute (2) 46:19;86:13		genital (1) 65:19	Gray (1) 32:5
flip (1) 58:8		genitalia (8) 61:14,23;63:7,14,20;64:5, 15;66:9	great (8) 6:15;11:14,18;27:22; 46:24;50:9;59:20;74:25
focused (2) 26:23;27:4	front (4) 11:16;16:8;71:1,2,1	gestational (3) 14:15,20;48:14	group (2) 30:4;65:15
follow (5) 39:24;77:24;78:2;79:3,5	fulfill (1) 30:16	give (6) 20:15;26:17;30:24;44:5, 17;81:7	guess (2) 30:5;40:6
following (2) 49:13;83:16	fulfillment (1) 58:11	given (4) 7:23;48:21;59:11;63:3	guidance (7) 45:3;77:24;78:19;79:3,5, 23;82:8
follows (2) 7:13;80:18	full (2) 11:24;14:16	gives (1) 28:9	guide (2) 41:25;78:24
follow-up (2) 54:4,5	fully (1) 10:14	giving (1) 9:24	guidelines (2) 76:15,19
forgot (1) 14:1	Fulton (1) 23:4	glad (1) 26:17	H
form (39) 6:7;33:7,12;34:16;35:7; 40:18,25;41:7,8;42:24; 45:22;46:13;52:2;57:23; 61:1,9,18;62:2;63:10,15,22;	functional (1) 65:21		half (1)
	functions (3)		

20:2	high (1)	Ideally (1)	incomplete (1)
happen (1)	85:15	74:25	62:14
38:24	higher (2)	identification (14)	inconsistency (1)
hard (1)	26:20,25	16:10;17:23;31:25;32:15;	73:24
55:7	highlights (2)	42:23;43:1;45:6;52:24;	inconsistent (1)
Having (5)	72:6;74:5	57:18;59:24;64:18;71:20;	82:7
7:13;35:13;38:8;40:6;	Hold (2)	76:24;79:8	indicated (1)
57:10	16:16;70:24	identified (5)	57:12
head (1)	Homeland (2)	27:5,8;41:18;56:25;61:3	indicating (2)
9:4	68:9,11	identifiers (2)	80:21;81:23
Health (32)	homicides (1)	67:8;75:10	indicator (1)
12:4;18:12;19:6,20;	28:25	identifies (2)	51:11
28:23;29:7,7;42:2,8;47:14,	honestly (2)	72:22,23	individual (7)
17:48;18:50;18:51;12:13,	10:18;15:14	identify (4)	22:20;54:1;60:12;80:22,
17,24;52:5,8,15;67:24;72:5,	honorifics (1)	27:10;60:25;70:14;84:9	25;81:24;82:2
15;78:4,5,13;82:8;83:3,13;	11:4	identity (32)	individuals (3)
84:12;85:13,16	hopefully (1)	11:5;24:24;25:13;26:6,8,	13:22;64:16;84:7
healthcare (3)	7:17	11,12,15,24;36:5,9;37:18;	individual's (2)
14:24;71:14;74:23	hoping (1)	43:7;46:12;65:18;67:14,18;	80:24;82:1
heard (1)	54:13	68:15,22,24;69:4,10,17,24;	induce (1)
38:13	hormonal (1)	70:9;73:21,23;84:4,8;85:3,	18:18
hearing (1)	62:1	20;86:7	Induced (2)
12:13	hour (1)	immediately (1)	12:25;18:19
held (1)	39:9	44:17	infants (1)
31:2	However (1)	impact (3)	44:15
help (6)	9:16	26:12;27:1;72:7	inferences (1)
30:15;40:16,23;42:9;	Hull (1)	importance (2)	72:19
44:14,24	29:24	72:6,18	information (43)
helped (1)	hundred (1)	important (10)	10:9;12:24;15:5;18:17;
31:1	75:13	21:19;42:4,13;46:10,14;	28:24;29:16;34:12,21;35:4,
helps (2)	hurry (1)	72:13;74:20;77:22;78:1;	9;40:12;41:5,11;42:16;
39:23;44:25	66:1	79:1	44:18;45:12;47:13,15,25;
Herchon (1)	hypospadias (7)	include (2)	48:2,11,15;49:5,9;50:24,25;
42:11	62:11;63:7,14,20,25;	18:17;77:19	51:1,16;52:14,17;53:25;
herein (1)	64:16;66:10	included (1)	54:14;55:14;60:1;63:17;
71:13	I	41:3	70:19;75:12;76:17;78:8,11;
Heron (1)		includes (1)	84:11,17;86:10
42:11	ID (2)	53:25	informs (1)
Hi (1)		Inclusion (1)	39:19
6:10	45:9,16	67:7	initial (3)

72:10;73:11,14	13:24;57:5;60:12	49:20;75:17,18	77:8;78:2;82:12,15,19,25;
Injunctive (1)	issues (1)	key (1)	83:6
16:22	74:22	16:23	laws (2)
input (2)	items (3)	kind (4)	80:1;82:7
30:24;74:21	48:21;76:16;77:19	21:15;49:18,19;85:25	lawsuit (1)
inputs (1)	J	kinds (1)	13:20
73:25		44:21	lawyers (2)
instead (1)	Jae (1) 7:11 Jaime (1) 10:25 January (2) 29:21;49:15 job (4) 40:13;42:3,4;44:11 John (2) 6:23,24 joining (3) 6:23;19:19;64:3 journal (3) 24:10;25:23;65:4 jurisdiction (2) 80:21;81:23 jurisdictions (1) 78:9 jury (2) 34:13;35:5 just (21) 6:4;10:21;11:20;14:3; 16:25;23:10;27:4,23;37:22; 41:18;43:10;44:5;49:16; 50:2,4,23;53:10;57:3; 64:20;77:2;83:11	KN (1)	9:7;41:11
8:1		11:1	lead (2)
instructed (3)		know (37)	73:25,25
9:10;41:12,14		8:21;9:15;14:4;15:8;	learn (2)
interest (8)		17:12;20:22;22:1;31:15,17;	15:4;42:7
20:24;26:13;51:23;85:8,		33:8,15;37:22;38:3;40:18,	learned (1)
8,14,18,18		21;41:1;42:14;43:11,23;	29:16
interested (1)		44:4,19;45:14;46:2,14,17;	least (3)
27:7		50:3;52:3;53:13;58:1;60:8;	45:3;50:14;72:20
interjurisdictional (1)		63:11;67:15;74:15;78:3;	leave (1)
52:21		84:19;85:21,24	34:3
internally (1)		knowledge (2)	lecture (1)
75:2		66:23;69:13	26:15
International (10)		known (4)	lectures (8)
20:6,14,18,18;21:24;22:5,		40:19;47:22;49:23;62:11	25:5,8,12,15;26:2,5;27:2,
8,10,12;24:11		L	15
into (3)			Lee (1)
45:1;47:16;55:6	laboratory (3) 21:22;22:9;24:17 lack (3) 65:16;66:5,7 LAMBDA (1) 6:21 language (3) 70:4;82:12;83:6 large (1) 22:19 last (7) 6:12;15:14;16:17;38:16; 54:5;65:12;83:9 law (12) 6:25;29:6;58:12;70:1,4;	90:2	
introductory (1)		Lefler (10)	
20:17		6:9,13;7:12;12:1;47:5;	
involve (1)		86:18,22,24;90:3,24	
74:11		Legal (2)	
involved (3)		6:21;58:18	
19:11;31:19;61:10		legislators (1)	
Iowa (1)		79:24	
23:12		less (1)	
IRB (1)		76:5	
42:5	K	lessons (1)	
issuance (1)		29:16	
80:5		LG (1)	
issue (2)		10:25	
12:19;82:19	Kayla (2) 10:25;90:2 keep (3)	license (2)	
issued (3)		46:3,4	

licenses (3) 69:10;16;70:12	59:1,4,10	making (1) 31:15	mean (4) 26:8;52:10;66:1;77:2
likely (1) 86:1	logical (2) 58:20,25	male (11) 54:2;56:18;57:1,5,13; 60:25;62:15;66:20;72:24; 73:4,20	meaning (1) 9:19
Lim (1) 7:11	long (7) 18:10,10;19:15,25;29:18; 30:18;46:2	male' (1) 55:25	means (1) 64:10
limitations (1) 70:1	longer (1) 59:10	manage (1) 18:21	measure (2) 74:7;75:7
line (1) 9:18	Long-term (1) 64:16	manner (1) 29:3	meatus (1) 62:15
link (2) 73:16;74:15	look (13) 24:6;43:16;47:7;52:22; 55:13,15,19;67:1;71:18; 75:23;76:12;77:12;78:19	many (11) 13:16;17:13;18:21;20:13; 25:25;30:9;38:19,22;60:7; 80:6;86:1	Medicaid (4) 71:5;72:21;73:22;75:11
linkage (10) 42:8;71:14;72:4,7,14; 74:1,7,12,22;75:8	looked (5) 39:10;57:11;64:2,9,20	marked (12) 16:10;17:23;31:25;32:15, 25;47:6;52:24;59:24;64:18; 71:20;76:24;79:8	Medical (8) 28:24;29:12;45:9;61:4; 63:16;64:17;66:5,7
linkages (1) 72:18	looking (3) 16:17;27:25;50:8	marriage (1) 18:18	medication (1) 9:23
linked (1) 48:15	looks (4) 22:24;24:4;25:6;29:22	match (4) 68:21;69:10;74:18,18	medicine (1) 23:14
linking (1) 74:3	lot (4) 26:23;40:12;42:7;74:11	matches (4) 70:18;71:9;74:5;75:13	meet (1) 7:2
list (1) 24:9	M	matching (3) 67:8,12;73:4	meeting (3) 39:10;64:21;77:2
listed (6) 25:20,21;27:19;28:5,9; 55:2		maternal (3) 42:20;51:12;52:4	member (2) 27:6;30:24
lists (3) 24:3;25:4;60:14	made (1) 9:9	matter (6) 6:19,22;10:24;17:3,7; 26:14	members (1) 29:12
literature (2) 40:8;42:19	maintain (2) 75:20;77:9	matters (1) 32:6	membership (1) 22:19
little (2) 31:7;55:7	maintaining (1) 76:8	may (6) 9:7;10:23;33:12;82:23; 83:5,22	mental (1) 29:6
live (7) 14:10;47:15;48:12;49:6; 52:7,13;54:8	maintains (3) 48:20;58:16;68:24	maybe (2) 43:24;44:16	mentioned (1) 24:14
lives (1) 26:12	maintenance (2) 78:20,25		mentioning (1) 17:15
local (1) 30:3	make (16) 7:5,17;9:8;10:12,16; 11:21;31:17;33:11;35:1,12; 61:17;62:1;63:18;65:9; 72:19;85:24		mentorship (1) 26:19
logic (3)			Merchant (1) 7:1
			method (1)

74:14	mother (1)	75:20;76:8;77:9	55:23;60:18,19
methods (2)	73:11	nature (1)	notes (2)
20:20;74:6	mother's (1)	36:9	55:21;56:15
Middle (3)	48:13	NCHS (3)	Nothing (1)
19:7,21;22:3	move (3)	78:19;79:3,5	34:2
might (5)	28:13;66:25;79:7	necessary (1)	noticed (1)
21:11;26:8,12;37:25;	much (5)	67:6	20:21
74:14	6:4,17;21:2;31:14;66:2	need (12)	notwithstanding (1)
military (1)	multiple (1)	7:24;9:14;10:8;14:1;	66:11
22:11	74:16	16:16;33:9;34:6;37:22;	number (6)
mind (2)	must (4)	44:21;59:16;66:2;87:1	14:8;44:20;45:13;53:18;
34:2;46:21	9:2,10;75:23;77:12	needed (2)	54:21;75:9
mine (2)	myself (1)	9:16;61:20	numbered (1)
10:3;24:11	32:5	needs (4)	11:13
minimum (1)	N	8:13;9:17;34:22;62:4	numbers (1)
77:19		negative (1)	44:15
minutes (1)	name (11)	74:18	O
47:1		negotiate (1)	
mismatches (1)	6:12,18;11:24;12:1;	21:13	oath (1)
70:12	38:13,15,16;80:24;82:1;	network (1)	8:6
mission (1)	90:2,3	29:6	Object (34)
30:16	name] (3)	neurobiology (2)	33:7;35:7;41:7,8,8;42:24;
Missouri (1)	55:16;56:11,12	23:23;37:9	45:22;46:13;57:23;61:1,9,
23:5	names (2)	never (2)	18:62;2;63:10,15,22;64:7;
Model (10)	17:14;38:11	12:11;41:1	65:1;66:14,22;70:15;73:6;
20:19;21:18,20;79:13,22;	narrative (1)	newborn (2)	74:2,24;76:1;77:15,25;
80:2,14;81:19;83:3,12	29:8	44:14;67:16	80:12;82:10,16,21;83:4,19;
modifying (1)	Nashville (1)	next (2)	85:4
86:10	29:24	8:11;68:12	objection (7)
monitor (1)	National (17)	Nice (1)	9:8;27:23;33:12;34:15,
29:4	42:1;48:17;67:24;75:24;	7:2	24:52;1;76:14
monitoring (1)	76:13,15;77:13,21;78:3,5,	ninth (1)	objections (2)
40:10	10,12,14;82:8;83:2,13;	55:16	6:6;9:9
month (2)	84:11	nod (1)	objective (1)
38:4;90:22	Nations (7)	8:1	76:7
months (3)	20:20;21:14;22:6,19,21;	nods (1)	observable (1)
19:17,18;49:14	24:13;30:6	9:4	14:20
more (9)	nation's (1)	None (3)	obtain (1)
10:9;14:4;19:11;42:7,9;	84:23	17:11;27:20;43:8	23:6
44:6;48:20;71:8;86:18	nationwide (3)	note (3)	

obtained (1) 48:11	28:1;29:18;30:21;31:20; 32:8,12;33:14;37:20;41:16;	9:9;29:4	29:5;42:21;51:12;52:5
obvious (1) 53:5	43:25;46:20,24;47:9;48:25; 49:22;50:1,9;51:5;53:1,23;	open (3) 9:20;16:18;76:19	outlier (2) 84:23;85:6
Occasionally (1) 9:7	54:19,24;55:5,18;56:7,14; 59:4,9,18,20,22;62:9,19;	opening (1) 62:16	outreach (1) 30:16
occur (1) 29:8	66:5,25;67:3,19;68:12; 70:20;71:1,3,22;80:10;	opinion (15) 31:8,14;35:15,19,25;36:4, 8,12,16,20;39:15;41:13,16;	outside (1) 66:15
occurred (1) 53:19	81:12,18;86:13	60:24;61:2	over (2) 7:16;58:7
occurring (1) 49:13	omits (1) 24:10	opinions (6) 31:7,11,13;32:9;35:20,22	overdoses (1) 29:2
occurs (1) 48:21	on (101) 7:18;11:19;13:23;14:3; 15:10,16;16:6,16;17:12;	optimal (1) 65:16	own (4) 40:17;41:4;73:17;79:25
October (1) 12:16	20:17,21,23;21:1;22:6,7,9, 11,20;25:10,20,21;26:23;	order (7) 61:7;72:14,19;75:19; 77:8;80:20;81:22	Oxford (2) 24:15;25:24
off (2) 46:25;86:15	27:4,19;28:5,9,13,15;29:14, 19,22;30:18,23,24;31:14;	Organization (4) 24:12;30:2,11,16	P
offering (9) 35:15,19,22,24;36:4,8,12, 16,20	32:24,25;33:9,18;35:1,25; 36:5,9,13,17,21;37:15,18; 40:17;47:8,13;48:20;49:3; 50:11;53:5,21;54:20;55:1;	organizations (2) 22:12;30:8	
Office (20) 7:8,10;15:17,22;28:23; 29:13;47:12;48:19;52:14; 57:20;58:15;67:23;71:4; 75:23;76:11;77:11,23;78:6, 18;79:2	56:1,19;57:6,13,16,17,20; 59:11;61:2,7,15,16,17,20, 24,25;62:1,16;63:4,12;66:8, 17,25;68:21;69:9;70:1,2,8, 10,24;71:22;72:7;77:7; 78:19,24;79:19;82:24; 83:15,23;84:2,7;86:6,11	organize (1) 30:15	package (1) 11:12
officer (1) 31:3	Once (2) 13:18;70:21	organs (2) 60:20,24	page (12) 16:17;32:23;47:8;48:4; 58:9;60:17;71:22;79:19; 80:15,16;81:9,13
Offices (2) 52:20;85:13	one (22) 9:7;11:13;24:4,4;38:13; 43:22,23;44:11;47:7;48:25; 51:8;54:3,20;60:8;62:13; 66:17,18;67:12;68:6;72:20; 74:14;75:12	other (52) 15:23;18:25;19:14;21:25; 23:8;25:18,19;27:17,18,20; 28:4,5,7,8,11;30:9;35:18, 23;38:11;39:25;40:21;41:3, 5,17;43:5;45:24;46:6,7,8; 50:17;51:22;52:3,20;54:1; 69:13;70:13,17;71:7;73:20; 74:10;76:2,6;77:18;80:6; 84:5,19;85:7,12,17,25;86:4, 8	Page/Line (1) 90:4
Oh (8) 13:4;37:20;44:3;46:6; 65:2;71:24;81:5,12	ones (1) 25:21	out (2) 17:11;34:3	pages (1) 17:13
Okay (79) 6:15;8:11;9:14;11:17,18, 23;12:2,5,9,15,22;13:6,10; 15:1,3,21;16:4,11,19,24; 17:2,5,16,21;18:14;19:9,18, 25;20:4,8,15;22:22;24:18;	only (2)	Outcome (2) 64:17;65:21	paper (4) 22:6,7;24:12,15
		outcomes (4)	paragraph (15) 47:7,11;48:7;50:11;51:8, 18;58:9;62:7;65:13;67:4,5, 19,21;79:20;80:17
			paragraphs (1) 65:7
			parameters (1) 42:15
			parents (2) 44:16,25

part (2) 17:13;40:10	perform (1) 59:10	PhD (1) 23:11	35:11
participate (1) 84:20	performance (1) 59:1	photo (2) 45:9,15	position (1) 19:16
particular (4) 15:9;20:24;42:16;74:13	performed (6) 14:9,14,21,23;59:5,7	physical (1) 52:19	positive (1) 74:17
particularly (1) 39:17	performing (2) 19:12;70:18	picked (1) 69:19	possess (4) 23:8,13,16,19
partnership (1) 78:22	perineoscrotal (3) 63:25;64:15;66:10	piece (1) 45:1	possible (5) 29:15;57:17,24;72:19; 79:4
party (1) 13:3	period (5) 19:4;31:5;49:19;54:25; 58:3	pieces (2) 40:22;41:3	potential (2) 72:7;73:12
passion (1) 21:25	periods (1) 14:15	place (1) 84:7	practices (2) 80:4;86:9
passport (7) 43:13;44:4;45:15,20,21; 46:7,8	permission (1) 44:17	places (1) 71:7	preface (1) 79:18
patients (1) 65:15	permit (3) 69:21;83:25;86:5	plaintiff (2) 72:21;73:1	Pregnancy (2) 13:1;18:20
PDF (3) 79:19;80:16;81:9	permits (1) 83:14	plaintiffs (7) 6:19,22,25;10:24;69:1, 15;73:19	premarked (8) 16:5,12;17:22;31:22; 32:13;53:2;60:2;64:13
peer (3) 64:23;65:4,10	permitting (1) 84:24	Planning (1) 19:10	preparation (2) 39:2;40:4
pending (1) 9:20	person (13) 45:10;57:1,4,10;61:13, 22;68:14;69:21;70:2;82:23; 83:23;84:1,25	please (5) 8:14,21;9:15;11:24;81:14	prepare (3) 39:4;40:16;58:13
penis (1) 62:16	personal (2) 43:11;67:7	pm (1) 87:9	prepared (3) 33:16;39:7;40:17
people (9) 27:3,5,9;64:4;66:19; 68:20;69:8;70:7;86:5	persons (2) 36:22;57:5	policies (1) 85:23	prepares (1) 63:16
people's (1) 52:7	person's (8) 26:11;57:12,17;67:13,17; 83:15,16;85:20	Policy (3) 19:10;76:7;84:23	prescribed (2) 81:1;82:3
per (1) 54:21	perspective (1) 75:1	Political (4) 19:7;20:6,14;23:1	presence (1) 66:11
percent (1) 75:13	pertain (1) 42:19	poor (1) 73:25	presentations (8) 25:5,19,25;27:18;28:4,8, 10;63:3
percentage (1) 14:13	pertaining (1) 55:16	population (1) 14:11	presents (1) 24:7
perfect (2) 74:5;75:12		portion (4) 43:13;50:14;77:17;86:19	president (2) 31:4,4
		portrays (1)	

prevent (1) 9:24	76:7	publish (1) 58:13	R-A-C-H-E-L (1) 38:15
Prevention (3) 18:23;68:1;78:7	promotion (1) 26:21	published (4) 22:6;65:4;79:15;83:13	Rachel's (1) 38:13
primary (6) 22:4;38:25;40:3;64:23; 67:22;73:10	pronounce (1) 6:12	pull (1) 16:5	Randi (1) 17:3
printed (1) 11:14	pronouns (1) 11:3	purpose (7) 29:9,11;30:12,14;68:12; 73:4;80:13	rate (1) 14:10
prior (1) 14:2	protocols (2) 39:24;74:10	purposely (1) 34:3	read (17) 16:3;40:8;45:4;48:23; 50:21;56:2;58:19;60:21; 65:22;66:3;68:4;69:11; 80:8;81:2;82:4,5;86:25
privilege (1) 41:10	prove (1) 45:9	purposes (3) 49:21;57:19;58:5	reading (4) 7:22;17:17;53:24;69:18
probably (1) 40:2	provided (6) 41:6;50:15,24;53:3;60:2; 62:4	put (1) 21:16	reads (1) 16:20
procedure (3) 80:23;81:25;83:17	provider (2) 61:5;63:16	Q	real (1) 21:20
procedures (1) 80:5	providers (1) 14:24	quality (2) 73:25;85:15	really (4) 31:14;42:2;43:19;46:18
process (2) 31:19;36:21	providing (1) 85:14	question (20) 8:17;9:8,10,18,20;10:3,5, 9:13;21;14:2;22:16;28:3; 33:13;44:4;52:11;54:5,13; 61:12;76:5;82:22	reared (2) 63:21;66:20
processes (1) 39:22	provision (1) 83:2	questions (15) 7:25;8:15,23;9:2;10:13, 17:14;18,22;17:25;18:7; 54:6;68:13;86:18,21,23	rearing (1) 65:19
product (1) 48:10	psychiatry (1) 37:3	quick (1) 69:18	reason (2) 10:20,22
profession (2) 40:9,10	psychology (2) 23:17;37:6	quickly (1) 64:9	reasons (1) 70:1
professional (1) 28:14	Psychosexual (1) 64:17	R	recalling (1) 17:14
Professor (1) 19:7	Public (10) 18:12;19:1;47:16;50:18; 51:12,17,24;52:8,15;54:9	race (1) 48:17	receipt (2) 80:19;81:21
program (4) 26:19,21;28:22;84:20	publication (3) 24:10;25:23,23	Rachel (2) 38:9,15	receive (1) 11:9
programs (2) 67:8,13	publications (14) 24:4,8,9,19,23;25:1,18; 27:17;28:4,7,10,12;63:1; 65:10		received (4) 11:12;35:9;39:9;64:1
project (1) 22:9			recent (1) 46:5
promote (4) 30:5;75:20;77:8;80:3			recognize (2)
promoting (1)			

76:25;79:9	74:19;82:17	17:8;46:5	84:21
recollection (2)	regarding (3)	remind (1)	requires (1)
17:17,20	12:19,20;62:20	37:21	8:8
recommended (1)	regards (1)	render (1)	reread (1)
77:20	82:23	31:8	81:14
record (13)	registrars (1)	renew (1)	Research (28)
9:9;11:25;45:9;46:25;	79:23	46:2	19:5;20:20;21:15;22:1,5,
53:6;55:24;56:17;57:12;	registration (1)	repeat (2)	11;26:19;39:16;40:7;42:17;
60:19;63:13;67:8;84:8;	80:4	82:14,18	47:17;50:19;51:13,17,25;
86:15	regularly (1)	rephrase (3)	52:16;54:16;58:5;62:20,22;
recorded (9)	42:2	8:22;28:3;52:10	64:23;72:5,15;74:10,13;
6:8;8:3;49:2,3;51:9,23;	regulation (2)	report (5)	75:1,11;85:10
53:21;63:8,12	81:1;82:3	17:3,6;84:11,13,17	researchers (9)
recording (2)	Regulations (6)	reported (1)	19:1;39:25;42:6;50:16,
7:19;78:20	79:14,22;80:1,2;82:7;	47:13	24;74:6;75:6;85:15;86:2
records (27)	85:23	reporter (3)	reserved (1)
29:7;32:6;52:20;57:25;	relating (1)	7:21;8:12;9:3	6:6
58:16;61:11;68:21;69:3;	34:7	reporting (5)	resolution (5)
70:11;71:4,15;73:2,4,17,22;	Relations (5)	18:21;28:16,21;52:4;	20:19,23;21:1,24;22:8
74:23;75:21,23;76:9,11;	20:7,14,18;22:5,10	84:21	resolve (2)
77:10,12,23;78:19;79:2;	relative (1)	reports (9)	21:9;74:22
81:11;85:12	14:10	14:7;17:10;35:13,16,18;	resource (1)
Recordsextracts (1)	release (2)	75:22;76:10;77:11,18	72:5
47:13	39:25;40:11	represent (2)	resources (1)
refer (4)	relevant (3)	6:18;46:15	29:14
10:23;62:10;65:7;68:13	15:6;26:13;40:13	representation (1)	respect (5)
referenced (1)	reliability (1)	22:18	15:19;24:17;35:10;86:9,
51:18	35:6	representatives (2)	10
referred (3)	reliable (1)	50:16;78:23	respects (2)
16:25;43:21;78:15	85:15	representing (6)	33:3,6
referring (5)	Relief (1)	6:21,24;7:8;9:11;13:2,3	responding (1)
11:2;27:9;58:22;68:14;	16:22	reproductive (1)	35:17
81:15	rely (1)	14:12	response (2)
refers (1)	39:15	request (1)	35:15;53:14
68:8	remain (4)	52:14	responses (2)
reflect (6)	55:15;57:19;58:7;60:1	requests (1)	7:23;16:23
46:11;69:3,16;70:9;	remember (8)	42:5	responsibilities (5)
73:23;86:7	15:2,15;17:17;38:4,8,10;	required (1)	18:15;30:23;42:3;44:12;
regard (6)	45:23;46:1	77:18	58:12
21:4;22:14;38:2;41:20;	remembering (2)	requirements (1)	responsibility (2)

42:5,10	rotate (1)	second (5)	serve (5)
responsible (5)	55:10	16:16;60:17;70:24;79:19,	13:10;28:15;29:22;73:4;
75:24;76:13;77:13,20;	routine (1)	20	80:3
78:14	72:4	section (15)	served (4)
result (2)	row (2)	70:23;71:3;72:1,2;73:5;	29:18;30:18,20;31:2
74:16;83:17	55:20;56:7	77:5,16;80:17;81:7,10,14,	service (2)
resulting (1)	rules (1)	16:83;6,7,21	14:25;28:14
62:15	39:22	Security (24)	services (1)
results (1)	S	18:24;20:19;22:7,14,21;	73:13
72:8		24:13;43:10;44:14,15,18,	serving (1)
résumé (13)	sadly (1)	20,22;45:4,12;48:16;68:2,9,	22:2
18:3,4,8;19:21;20:21;		11,21,24;69:2;70:10;73:22;	set (1)
22:25;24:3,6;25:22;27:25;	56:22	84:18	28:10
28:6,9,15	Safety (2)	Sedgwick (1)	sets (2)
returns (1)	68:8,11	7:11	67:7;75:14
77:18	same (8)	seeking (1)	setting (1)
revealing (1)	8:12;11:6;34:24;49:17;	31:17	45:18
40:14	56:4;67:17;84:20,21	seeks (1)	seven (1)
Review (4)	Sara (1)	30:4	58:9
24:11;42:5,19;74:10	7:11	seem (1)	sex (53)
reviewed (10)	Sasha (1)	45:23	15:10;31:16;35:25;36:3;
16:1;17:2,5,9;35:13;39:6;	6:18	select (1)	42:20;49:2,3;51:9,23;52:4;
57:16;64:23;65:4,10	saying (2)	29:1	53:21;54:2,21;55:1,25;
reviewing (1)	8:2;44:2	selected (1)	56:18;57:5,10,12;60:14,20,
49:16	scenarios (1)	28:9	24:61;7,16,25;63:8,12,19;
reviews (1)	21:21	selection (1)	65:16;66:8;67:6;68:15,20;
58:16	school (1)	24:8	69:8,22,23;70:2,7;71:7;
revision (1)	22:2	send (1)	73:20,24;80:21;81:23;
79:25	Science (4)	44:17	82:24;83:14,16,23;84:3,13;
right (7)	19:7;20:6,14;23:1	sense (1)	85:1,1;86:6,10
16:24;24:5;55:20;56:5;	scope (1)	22:18	shall (3)
66:25;86:25;87:2	66:15	sent (2)	77:19;80:25;82:2
risks (1)	screen (2)	11:10;69:12	share (5)
74:3	11:19;16:7	sentence (5)	11:19;16:6;19:13;52:17;
role (10)	screening (1)	58:10;65:12;66:18;67:5;	54:11
12:22,23;13:11,14,17;	67:16	83:9	shared (3)
15:23;19:16;22:2;31:15;	scroll (1)	sentences (1)	54:7,15;71:5
61:10	16:16	79:21	shares (1)
roles (1)	Sebold (1)	series (1)	44:13
68:25	17:6	54:5	sharing (3)

18:25;68:10;85:23	82:23	82:13	state's (3)
Shayne (1)	six (3)	spell (1)	15:12;18:16;31:15
17:6	47:8;48:4;58:9	38:12	Statistical (27)
SHEET (1)	Social (17)	spoke (2)	19:5;47:23,25;48:1,10;
90:1	18:23;43:10;44:14,15,18,	39:2,12	49:1,20,23,24;51:1,19;
SHEW (45)	20,22;45:4,12;48:16;68:1,	spoken (1)	53:22;54:15,18;56:1,4,19;
7:6,6;27:23;33:7,11;	21,23;69:2;70:10;73:21;	38:19	57:6,9,20;58:1,5,17,21,22;
34:15,24;35:7;38:7;41:7;	84:17	SSA (1)	59:6,11
42:24;45:22;46:13;52:1;	solely (1)	68:2	Statistics (49)
53:5;57:23;61:1,9,18;62:2;	35:1	standardized (1)	12:8;18:11;19:3;24:20,
63:10,15,22;64:7;65:1;	someone (1)	48:16	21:25;9,11;26:3;31:19;
66:14,22;70:15;73:6;74:2,	68:14	stands (1)	32:6;34:18;39:17,18;42:2,
24;76:1,14;77:15,25;80:12;	something (2)	17:11	6;48:18,20;49:12;52:15;
82:10,16,21;83:4,19;85:4;	8:21;33:9	start (2)	57:20;58:7,14,16;67:23,25;
86:22,23;87:5	sometimes (1)	8:15;47:1	74:11;75:10,25;76:13;
shopping (1)	44:16	started (2)	77:14,21;78:4,6,13,14,21;
21:8	soon (1)	7:15;11:23	79:14,24;80:1,7;82:9;83:3,
Short (2)	49:6	state (48)	12,14;84:12,24;85:9,13,19
47:3;86:16	sorry (21)	11:24;12:24;13:4,6,7,22,	step (1)
show (2)	13:25;21:6;33:24;34:9;	24:14;7,9,12,21,23;15:18,	14:1
31:20;61:6	38:12,18;46:5;52:11;53:10;	23;16:23;18:25;19:8,14,21;	steward (1)
showed (2)	54:3;65:2,25;66:6;70:24;	28:23;45:17;48:22;52:20;	18:24
57:5,9	71:24;72:25;81:3,6,12,13,	53:19;58:12,14;60:13;68:3,	still (1)
showing (4)	20	6;69:25;70:13,17;76:2,20;	81:3
16:11;53:2;59:25;64:13	sounds (2)	79:13,21,23,24,25;80:6,22;	stipulate (1)
shows (3)	21:23;72:12	81:24;82:12;83:6,12,22;	6:5
54:20,24;57:7	source (2)	85:12,22	stop (2)
sign (1)	24:22;62:23	statement (4)	49:19,19
86:25	sources (1)	43:23;66:17;68:7;80:11	stopped (1)
signature (1)	62:13	statements (5)	58:4
32:24	speak (7)	32:22;35:12,23;39:6;40:4	Strike (3)
significant (1)	8:11;34:17;36:2;38:1,5;	states (36)	34:10;66:6;83:10
20:23	43:9;85:21	16:22;30:9,10;47:11;	strong (2)
similar (6)	Specialist (1)	48:7;50:12;51:9,22;52:3;	59:17;85:14
30:8;84:11,17;85:8,18,25	19:5	58:10;65:14;67:5,21;71:4;	structured (1)
simulations (1)	specific (3)	72:2,3;76:6,16;78:8,9;80:3,	39:23
21:18	29:5;40:20;53:25	18;81:19;83:9,25;84:5,6,10,	studies (3)
situation (1)	specifically (10)	13,16,19;85:7,17,22;86:1,5	21:21;41:20,22
85:6	17:11,15;26:16;28:25;	states' (1)	study (7)
situations (1)	60:9;64:8;69:5;77:3;79:20;	86:8	64:14,19,23;65:6;72:6,

17;74:5	surgery (1)	71:5;73:2,8,15	Thanks (4)
studying (1)	65:19	Tennessee (43)	6:17;8:20;87:5,6
39:19	Surgical (4)	7:7,9;12:3,21;13:5,6,7,24;	theory (2)
style (1)	64:17;80:23;81:25;83:17	15:10,18,23;19:8,19,21;	21:8,17
40:20	surveillance (8)	22:3;28:16,20,22;47:14,22;	things (1)
subject (3)	47:17;50:18;51:13,17,25;	48:9;49:1,22;53:20;58:12;	10:21
26:14;37:15,18	52:9,16;54:10	68:2,6,8;69:20,25;75:22;	think (16)
submit (3)	sworn (3)	76:10,22;77:5,11,23;78:15,	10:22;26:10;27:24;47:8;
13:13;45:14,19	6:2;7:13;90:21	18;79:2;82:12,15,19,25	50:7;56:12;66:3;67:17;
submitted (3)	System (16)	Tennessee-issued (4)	69:11;76:5;77:22;79:1,5;
45:25;58:2,3	28:17,21;47:23,25;48:1,	69:9,16;70:11;73:23	80:16;84:6,6
Subscribed (1)	10;49:2,23;57:6;58:17,21;	Tennessee's (5)	thinking (1)
90:21	75:21;76:9;77:10;80:7;	15:7;82:6;84:22;85:8,18	26:18
subsection (3)	84:23	term (2)	third (2)
77:7;78:15;81:17	systems (3)	62:24;64:2	22:8;79:20
subsequent (1)	49:2;74:16;75:3	Termination (2)	those (30)
42:17	T	12:25;18:19	11:15;18:22;25:19;26:2,
subset (1)		terminations (1)	5;27:2,18;28:5,8,11;29:8;
77:16	table (4)	18:19	35:17,23;38:23;39:11;
substance (1)		terminology (1)	41:22;43:3,20;44:24;47:21;
37:24	53:24;54:3,20;55:6	64:9	52:7,13;54:8,15;74:22;
substantive (1)	taking (1)	terms (5)	75:14;76:11,19;84:10,16
40:14	46:21	14:8,23;39:21;58:14;	though (2)
success (1)	talk (4)	65:17	72:22;83:11
27:1	22:13;26:15;31:6;43:15	terrible (1)	three (6)
sufficient (2)	talked (3)	50:2	19:17,18;25:4;32:23;
45:11;83:22	24:16;27:20;39:11	test (1)	38:21;50:11
suicides (1)	talking (2)	59:10	through (8)
28:25	50:5;83:7	tested (1)	11:13;17:12;42:7;52:20;
summary (1)	Tara (1)	21:21	55:5,13;59:1;76:10
53:18	6:20	testified (6)	Throughout (1)
supervise (2)	taught (2)	7:13;12:12,14;14:6;	10:23
18:15;32:5	20:13,17	15:20;54:10	times (3)
sure (19)	Taylor (3)	testify (2)	13:16;38:19,21
11:21;13:9;31:17;44:1,3,	17:6;35:14,21	8:9;13:16	title (2)
7,9;45:17;52:12;61:12,19;	teach (1)	testimony (6)	12:6,7
62:3;64:12;70:16,22;73:15;	20:11	7:22;9:25;13:14;14:5,17;	titled (1)
76:2;81:16;85:5	team (1)	32:9	64:14
surface (1)	29:17	tests (2)	today (13)
62:16	TennCare (4)	59:2,5	6:17;7:10;8:6;9:25;

10:12;11:11;39:3,10;56:5; 64:3,21;86:18;87:2	trying (3) 44:24;46:1;81:4	26:9;34:13;42:14;43:1,6, 19;44:25;50:23;54:12;57:3; 69:25;73:7;77:4;82:22; 83:1,20;85:11	52:3;73:9;74:11;86:1
today's (1) 39:5	turn (13) 16:4;17:21;31:21;32:13, 23;47:5;51:8;55:11;56:7; 59:22;64:11;76:21;80:15	understanding (8) 30:5;39:21;47:10;55:14; 66:6;78:17;82:15,18	used (15) 40:3;41:25;42:17,25; 43:2,6;47:16;51:11,16; 62:12;67:8,16;71:8;85:9,19
together (2) 21:16;45:11	turning (2) 54:3;60:17	understood (5) 8:23;9:21,22;43:22;68:17	users (3) 50:17;58:15;67:22
tool (1) 45:6	two (9) 21:12;24:3,9,18;38:21; 43:20;48:7;55:6;74:5	uniformity (4) 75:20;76:8;77:9;80:3	uses (2) 45:17;67:12
tools (1) 75:7	type (2) 39:18;65:6	United (9) 20:19;21:14;22:6,19,21; 24:13;30:6,10;78:9	using (5) 11:3,11;51:23;73:1,16
topic (1) 21:2	types (1) 65:19	University (3) 19:8,22;23:12	V
total (2) 14:8;48:19	typically (2) 63:7;66:20	unknown (8) 55:2;57:7,10;60:15; 61:14,23;63:8;66:21	
training (2) 23:22;39:16	U	unless (1) 9:10	valid (1) 75:2
trans (1) 84:25		up (8) 16:6,17;47:1;61:17;62:1; 64:2,9;69:19	validity (4) 58:18,20,25;76:4
transcript (1) 7:21	uh-huhs (1) 9:5	update (9) 61:15,24;62:4;69:8,21; 70:7;84:1,25;86:5	valuable (1) 72:5
transgender (12) 11:1;27:3,9;36:22;68:13, 19;69:7,21;70:7;73:19; 84:1;86:5	uh-uhs (1) 9:5	updating (1) 49:20	values (1) 48:13
transition (1) 36:21	UN (1) 22:14	upon (3) 39:15;80:19;81:21	VANESSA (5) 7:12;12:1;87:6;90:3,24
treated (1) 26:25	unaltered (1) 57:19	up-to-date (1) 18:4	variable (1) 26:13
treatment (1) 36:17	UNA-USA (3) 29:23;30:2,3	urethra (1) 62:15	variables (1) 75:5
trend (1) 14:20	unbiased (1) 72:18	urethral (1) 62:15	variety (3) 30:22;73:8;75:5
trial (2) 12:12,14	uncertain (1) 34:25	use (13) 11:20;22:9;24:21;25:11; 34:18;43:4,9,12;44:10;	ventral (1) 62:16
true (1) 9:24	under (4) 8:6;9:23;58:12;81:10		venue (1) 21:8
truthfully (1) 8:9	undergraduate (1) 23:9		verbally (1) 7:24
try (5) 8:16,22;9:15;29:7;70:13	understand (23) 8:5,7,20;10:3;11:7;13:21;		verification (1) 67:13
			verify (3) 58:25;70:14;85:19

version (2) 46:3;57:11	23:4,11	12:2,3;15:6;19:15,25; 20:5,23;22:13;26:18;34:7, 13;35:11;39:19;78:22	37:2,5,8,11,14,17
vice (1) 31:4	what's (6) 16:4,11;17:21;31:21; 47:6;53:2	worked (6) 14:3;15:16,17,21;19:20; 20:2	1
video (1) 7:19	whenever (2) 9:16;79:4	works (1) 6:21	1 (5) 16:5,10,12;69:12,19
Violent (4) 28:16,20;29:3,8	Whereupon (1) 87:8	worksheets (1) 42:1	10 (3) 76:22,24;80:15
virtually (1) 7:11	wherever (1) 35:9	world (1) 21:20	11 (4) 11:12,13;79:7,8
vitae (1) 24:7	whether (10) 13:22;14:19;15:8;22:17; 34:25;54:7,14;76:6;80:23; 81:25	wrap-up (1) 87:1	15 (1) 49:14
Vital (54) 12:8;18:11,16;19:3; 24:19,21;25:9,11;26:3; 31:18;32:6,6;34:18;42:6; 47:12;48:19;52:15,20; 57:20,25;58:13,16;61:11; 67:23;74:11;75:10,21,23, 24;76:9,11,13,17;77:10,12, 13,21,23;78:8,10,14,19,21; 79:2,13,24;80:1,7;81:10; 83:12;84:24;85:9,12,19	whose (2) 54:25;68:14	write (1) 40:19	18 (1) 40:20
	William (1) 90:2	writer (1) 50:3	19 (1) 81:9
	Winemiller (1) 6:24	writing (2) 40:20;41:4	1980 (2) 53:20;54:21
	wish (2) 33:23,25	written (3) 13:13;41:1;62:25	1992 (1) 79:15
	within (2) 49:10;51:1	wrote (1) 20:25	1A (4) 51:9,18;65:7,9
W	Without (4) 37:20,24;40:14;46:3	X	1B (2) 62:7;65:7
wait (1) 33:9	Witness (11) 6:2,10,13;7:2;33:14; 46:22;47:2;59:18;65:2; 87:7;90:3	XY (1) 64:16	1C (4) 67:4;70:23;71:3;73:5
waiting (1) 53:13	woman (1) 73:19	Y	1st (1) 18:13
wanted (2) 11:20;55:12	women (7) 11:1;14:11;26:20,22; 27:5,9,10	y'all (1) 86:14	2
wanting (1) 22:17	women's (1) 26:24	year (6) 14:8;29:21;49:10,13; 54:21;59:11	2 (3) 17:22,23;18:12
way (7) 10:6;15:10;40:3;55:20; 58:6;66:15;83:20	words (2) 9:3;13:19	years (3) 20:3;30:20;40:21	2:54 (1) 87:9
ways (4) 26:24;42:16;43:5;73:8	work (14)	yourself (6)	2005 (1) 56:22
Westminster (2)			2006 (1) 23:7
			2014 (1)

71:13	52:23,24;53:3;54:20		
2015 (1)	68-3-202 (2)		
24:4	76:23;78:16		
2017 (1)			
24:5	7		
2018 (3)			
18:13;53:20;54:22	7 (2)		
2019 (6)	59:23,24		
12:17;29:21;38:3;39:1;	8		
49:15,18			
2020 (1)	8 (2)		
90:22	64:14,18		
21 (6)			
80:16,17;81:10,13,14,16	9		
3	9 (2)		
	71:19,20		
3 (6)			
31:22,25;47:6;50:12;			
58:8;67:20			
3:51 (1)			
86:14			
300 (1)			
48:21			
4			
4 (6)			
32:14,15,25;51:5;62:6;			
67:2			
43 (1)			
54:24			
46 (1)			
64:16			
48 (2)			
83:25;84:6			
6			
6 (4)			